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CONSTITUTIONAL MAJORITY RULE AND THE CYPRUS CONSTITUTION: THE 1983 CYPRUS CRISIS IN CRITICAL PERSPECTIVE

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I. INTRODUCTION	1
II. INDEPENDENT CYPRUS IN HISTORICAL PERSPECTIVE	3
III. THE PEOPLES OF CYPRUS	4
IV. THE DIPLOMATIC VARIABLES	6
A. <i>The Mainland Factors</i>	6
B. <i>The Military Factors</i>	8
V. CONCURRENT MAJORITY POPULAR GOVERNMENT	8
VI. THE CONCURRENT MAJORITY ON CYPRUS	12
A. <i>The Concurrent Majority Cyprus Legislature</i>	13
B. <i>The Concurrent Majority Cyprus Executive</i>	16
C. <i>Calhoun and the Cyprus Executive</i>	17
VII. THE CYPRIOT ARMY VETO	19
A. <i>The Evidence: Calhoun in the Dock</i>	19
B. <i>The Verdict</i>	20
VIII. PUBLIC SERVICE APPOINTMENTS	21
IX. THE CYPRIOT PERSONAL INCOME TAX DEADLOCK	22
A. <i>The Evidence: Calhoun in the Dock</i>	22
B. <i>The Verdict</i>	23
X. THE MUNICIPALITIES ISSUE	26
A. <i>The Evidence: Calhoun in the Dock</i>	26
B. <i>The Verdict</i>	28
XI. THE DESTRUCTION OF THE CYPRUS CONSTITUTION	29
XII. CONCLUSION	30
A. <i>The 1960 Constitution</i>	30
B. <i>The 1983-1984 Situation</i>	32
C. <i>The Concurrent Majority and Cyprus: 1984-1985</i>	33

I. INTRODUCTION

On November 15, 1983, the sovereign independence of the Turkish Cypriot people was formally asserted:¹ "Expressing the legitimate and irrepressible will of the Turkish Cypriot people . . . we hereby declare before the world and history the establishment of the Turkish Republic of Northern Cyprus as an independent state."² Turkish Cypriot leader Rauf Denktash trembled with emotion when he thus addressed the Turkish Cypriot Assembly,³ but Greek Cypriots maintained, with at least some evidence to support their view, that the Denktash move had been orchestrated by the Republic of Turkey.⁴

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¹ *Turk Cypriots Will Draft Constitution*, St. Louis Post-Dispatch, Dec. 4, 1983, at 14A, col. 1.

² Davidson, *The Reversible Republic*, TIME, Nov. 28, 1983, at 38.

³ Rogal, *A New State of Tension*, NEWSWEEK, Nov. 28, 1983, at 58.

⁴ *Id.* "As the armorer and paymaster of Turkey, the United States may not have given a green

The move undermined United Nations Secretary-General Javier Perez de Cuellar's work toward a settlement between the Greek Cypriot and Turkish Cypriot communities. Upon an August 1983 intercommunal talks breakdown the Secretary-General had pushed for renewed negotiations, and an early 1984 summit was to have taken place between Mr. Denktash and Cypriot President Spiros Kyprianou in the presence of the Secretary-General.⁵

Both Turkish Cypriot leaders and top level Republic of Turkey officials stressed that the independence decision was irreversible.⁶ By December 2, 1983, the legislature of the Turkish Federated State of Cyprus, the autonomous administration that preceded the newly-declared Turkish Republic of Northern Cyprus, by a vote of 26 to 14 established a seventy member constituent assembly to draft a constitution for the newly proclaimed republic.⁷

Bangladesh and the Republic of Turkey had extended recognition by December 4, 1983,⁸ but Denktash accused the United States of a political embargo against his republic.⁹ He said the independence move resulted directly from the Greek Cypriots' move of May 1983 for a United Nations General Assembly mandate for extending their legal jurisdiction over all of Cyprus.¹⁰

This fresh Cyprus development suggests that there could be merit today in a reappraisal of the 1960-1963 Republic of Cyprus Constitutional partnership of Greek Cypriot and Turkish Cypriot. The current crisis most effectively can be dealt with if the lessons of that hopeful Republic of Cyprus Constitution are learned.

The following pages outline, in a critical perspective, the 1960 Constitution of Cyprus and the stresses to which it was put. It will be seen that this Cyprus Constitution, premised upon the concurrent majority theory of popular government refined by and identified with America's Senator John C. Calhoun, afforded an intercommunal partnership experiment. Review of this history could suggest that future constitution draftsmen in Cyprus and elsewhere might reconsider utilization of the concurrent majority device. It is proper to identify the concurrent majority principle with constitutional democracy in the phrase "constitutional majority rule": Calhoun pointed out that a concurrent majority requirement is an essential element of every constitutional democracy of whatever form.

light to the U.D.I. [Unilateral Declaration of Independence], but it most certainly did not flash a red one." Editorial, *Turkey's Big Bite*, NATION, Nov. 26, 1983, at 522. On the other hand:

Some say the declaration was a maneuver to enhance Denktash's position with Turkey. The positions of the Turkish-Cypriot leader have often differed from those of Ankara in recent months. According to sources close to the intercommunal negotiations, Denktash feared that Turkey might try to negotiate a solution to the Cyprus problem directly, ignoring his wishes and without consultation. By presenting Ankara with a fait accompli Denktash has, according to this argument, eliminated this possibility.

Bruce, *Greece moves to save face in crisis with Turkish Cyprus*, Christian Sci. Mon., Nov. 18, 1983, at 11, col. 3.

⁵ Wiznitzer, *U.N. resigned to Turkish-Cypriot move*, Christian Sci. Mon., Nov. 17, 1983, at 11, col. 1.

⁶ Cohen, *Turks confident about new Cypriot nation*, Christian Sci. Mon., Nov. 22, 1983, at 11, cols. 1,

2.

⁷ *Turk Cypriots Will Draft Constitution*, *supra* note 1, at 14A, col. 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

II. INDEPENDENT CYPRUS IN HISTORICAL PERSPECTIVE

Cyprus has through the ages been governed as a unit.¹¹ The island never has been under Greek rule,¹² although the presence thereon of Greeks can be dated to the thirteenth century B.C.¹³ It was a portion of Magna Graecia, the great classical Greece.¹⁴ The island was successively conquered and ruled by Phoenicians, Egyptians, Assyrians, Persians, Macedonians, Romans, Byzantines, Lusignans, Venetians, the Ottomans and the British.¹⁵ It was conquered during 1571 by the Ottoman Turks, and it is from that juncture that the emergence of a Turkish-speaking Muslim community on the island can be traced.¹⁶ The Greek population attained majority status only in the lifetime immediately preceding independence.¹⁷

Ottoman rule endured until in 1878 Turkey leased Cyprus to the British, thereby facilitating British promises to protect the Ottoman Empire from Russian aggression.¹⁸ In 1923, in the wake of the First World War, Turkey transferred to the United Kingdom her sovereignty over Cyprus.¹⁹

Cyprus' status as a British Crown Colony ended in 1960.²⁰ For over two millenia Cypriots had enjoyed no experience with self-government except at the local level.²¹ In 1960 Cyprus for the first time in her history emerged as a sovereign state.²²

Until shortly prior to independence serious intercommunal conflict between Turkish and Greek Cypriots was nonexistent.²³ So recently as during the Second World War, relations between Turkish and Greek Cypriots were peaceful and had been for as long as could be remembered.²⁴

NATO Secretary General Paul Henri Spaak successfully arranged for representatives of Britain, Greece and Turkey to open talks on Cyprus in Paris during December 1958.²⁵ The Paris meeting participants began to talk seriously for the first time about the notion of an independent Cyprus.²⁶ Talks were continued in Zurich with the participation

¹¹ Trombetas, *The Republic of Cyprus: A Federation?* in INSTITUTE FOR MEDITERRANEAN AFFAIRS, THE CYPRUS DILEMMA 7, 18 (1967).

¹² Karpas, *Solution in Cyprus: Federation*, in INSTITUTE FOR MEDITERRANEAN AFFAIRS, THE CYPRUS DILEMMA 35, 38.

¹³ *Crisis on Cyprus: 1974, A Study Mission Report Prepared for the Use of the Subcomm. to Investigate Problems Connected with Refugees and Escapees of the Comm. on the Judiciary U.S. Senate*, 93rd Cong., 2d Sess. 9 (1974) [hereinafter cited as *Crisis on Cyprus: 1974*].

¹⁴ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, THE CYPRUS QUESTION 10 (1967).

¹⁵ *Crisis on Cyprus: 1974*, *supra* note 13, at 9.

¹⁶ *Id.*

¹⁷ Trombetas, *supra* note 11, at 38.

¹⁸ Thomas & Thomas, *The Cyprus Crisis 1974-75: Political-Juridical Aspects*, 29 Sw. L.J. 513, 514 (1975).

¹⁹ Karpas, *supra* note 12, at 38. Britain had proclaimed the annexation of Cyprus in 1914. Cyprus became a Crown Colony in 1925. INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 20.

²⁰ Trombetas, *supra* note 11, at 8.

²¹ Ehrlich, *Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis*, 18 STAN. L. REV. 1021, 1038 (1966).

²² *Id.* at 1021.

²³ Worsley, *Communalism and Nationalism in Small Countries: The Case of Cyprus*, in SMALL STATES IN THE MODERN WORLD 1, 2 (rev. ed. 1979).

²⁴ Caradon, *Cyprus: The Drift to Disaster*, in AMERICAN HELLENIC INSTITUTE, CRISIS ON CYPRUS 59 (from Worldview, December 1974).

²⁵ CYPRUS: A COUNTRY STUDY 3D 36-37 (F. Bunge ed. 1980).

²⁶ *Id.* at 37.

of Greek Prime Minister Karamanlis and Turkish Premier Menderes. Provisional agreement on an independent Republic of Cyprus was reached on February 11, 1959.²⁷

The Greek and Turkish governments in all likelihood felt that they adequately represented the island's two communities, and there is much history to underpin such a judgment.²⁸ As it transpired, Greek Cypriots expressed disappointment because enosis had been frustrated.²⁹ The Turkish Cypriot view had been that if Great Britain were to surrender sovereignty over the island, it should be returned to the island's former owner, Turkey;³⁰ the greatly outnumbered Turkish Cypriots, however, welcomed the independence agreements and relinquished their defensive earlier demand for taxim — the partition of Cyprus.³¹

On August 16, 1960, Cyprus became an independent republic³² with the exception of two areas identified as military bases over which British sovereignty was retained.³³ The new republic was admitted to the United Nations on September 21, 1960;³⁴ at the Commonwealth Prime Minister's Conference of March 13, 1961, Cyprus became an independent member of the British Commonwealth;³⁵ and on May 24, 1961, Cyprus became the sixteenth member of the Council of Europe.³⁶ The Constitution of Cyprus, plus the Treaty of Establishment, the Treaty of Guarantee, and the Treaty of Alliance signed on August 16, 1960, constitutes an international treaty.³⁷

III. THE PEOPLES OF CYPRUS

According to the 1960 official census the 574,103 Cypriots encompassed 446,362 Greeks, 104,333 Turks, and 23,318 others, including English, Maronites, Gypsies and Armenians³⁸ in a land about the same size as Lebanon (or only half the size of New Jersey).³⁹ The Greek-speakers follow the Greek Orthodox religion and the Turkish-speakers are Muslims.⁴⁰ A common linguistic, religious, and national identity singles out the Turkish minority from the Greek majority.⁴¹

²⁷ Doumas, *The 1960 Constitution of Cyprus: Some Observations*, SOUTHERN Q., Oct. 1970, at 67, 71.

²⁸ T. EHRLICH, CYPRUS 1958-1967: INTERNATIONAL CRISIS AND THE ROLE OF LAW 47 n.18 (1974).

²⁹ F. Bunge, *supra* note 25, at 37. Enosis means Cyprus's "union with Greece." Adams, *The First Republic of Cyprus: A Review of An Unworkable Constitution*, W. POL. Q. 475, 482 (1966); Doumas, *supra* note 27, at 69; *Crisis on Cyprus: 1974*, *supra* note 13, at 9.

³⁰ Z. NEDJATIGIL, CYPRUS: CONSTITUTIONAL PROPOSALS AND DEVELOPMENTS 3 (1977).

³¹ F. Bunge, *supra* note 25, at 37. Taksim (or taxim) means the partition of Cyprus. Doumas, *supra* note 27, at 70 (Taksim); S. KYRIAKIDES, CYPRUS: CONSTITUTIONALISM AND CRISIS GOVERNMENT 49 (1968) (taxim).

³² R. STEPHENS, CYPRUS: A PLACE OF ARMS 168 (1966). "Under the Cyprus Act, 1960, 8 & 9 Eliz. 2, c. 52, Queen Elizabeth, by Order in Council, named August 16, 1960, as the date of Cypriot independence." Ehrlich, *supra* note 21, at 1033 n.54 (citing Stat. Instr. 1960, No. 1368).

³³ Trombetas, *supra* note 11, at 7.

³⁴ R. STEPHENS, *supra* note 32, at 168.

³⁵ Evriviades, *The Legal Dimension of the Cyprus Conflict*, 10 TEX. INT'L L.J. 227, 238 (1975). Marios L. Evriviades is Press Counselor of the Embassy of the Republic of Cyprus. Evriviades, Letter to the Editor, U.S. NEWS & WORLD REP., Jan. 9, 1984, at 4.

³⁶ EDS. OF DEADLINE DATA ON WORLD AFFAIRS, CYPRUS — Old Problem, New Crisis 28 (1964) [hereinafter CYPRUS — Old Problem, New Crisis].

³⁷ Theodorides, *The United Nations Peace Keeping Force in Cyprus (UNFICYP)*, 31 INT'L & COMP. L.Q. 765 (1982).

³⁸ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 12.

³⁹ R. STEPHENS, *supra* note 32, at 169; *Crisis on Cyprus: 1974*, *supra* note 13, at 9.

⁴⁰ Thomas & Thomas, *supra* note 18, at 513.

⁴¹ Trombetas, *supra* note 11, at 16.

Maronite, Armenian, and Roman Catholic Cypriots (the latter known in Cyprus as Latins) were, after the promulgation of the Constitution, included in the Greek register.⁴² Compare the situation — albeit not directly germane to Cyprus — presented by the exchange of populations between Greece and Turkey negotiated after the Treaty of Lausanne in 1923. Professor Bernard Lewis has pointed out that many of the Greeks leaving Turkey spoke not Greek but Turkish, while Turks leaving Greece spoke not Turkish but Greek: "The uniformity was that the 'Greeks' were Christian and the 'Turks' were Muslim."⁴³

Cyprus is comprised of 634 separate communities — 619 villages, 9 suburbs, and 6 towns. It is divided into six districts named after the main town in each:

1. Famagusta, with 91,371 (82.81%)
Greeks and 18,967 (17.19%) Turks.
2. Kyrenia, with 26,264 (85.94%)
Greeks and 4,298 (14.06%) Turks.
3. Larnaca, with 43,961 (77.68%)
Greeks and 12,630 (22.32%) Turks.
4. Limassol, with 85,918 (86.41%)
Greeks and 13,510 (13.59%) Turks.
5. Nicosia, with 157,236 (79.42%)
Greeks and 40,753 (20.58%) Turks.
6. Paphos, with 43,946 (75.61%)
Greeks and 14,175 (24.39%) Turks.⁴⁴

The arable land in Cyprus consists of 3,197,748 donums (a donum = 0.227 acre). The Turks held but 652,486 donums, or 20 percent of the total.⁴⁵ The average annual per capita income during the 1960s was 400 dollars, but most of the inhabitants lived on farms and subsisted upon approximately 200 dollars per year.⁴⁶

Britain left behind good roads, a high rate of literacy, and an efficient and incorrupt administration.⁴⁷ The economy of Cyprus is usually compared with that of the politically highly stable Israel.⁴⁸ During the 1960-1963 period the Cypriots' per capita national income of 400 dollars per year was higher than that of any nation in the eastern Mediterranean but Israel.⁴⁹ By 1973, the last year prior to the mainland Turkish invasion, the per capita income had reached \$1,313.⁵⁰

The Turkish Cypriot element of the populace was not and never had been concentrated in any single area.⁵¹ Of a total of 627 villages, 123 had been purely Turkish, 112 had been mixed, and the balance were pure Greek.⁵² The colonial period saw a steady

⁴² Doumas, *supra* note 27, at 74; Bunge, *supra* note 25, at 158.

⁴³ *Cyprus, Once More*, Wall St. J., Nov. 29, 1983, at 32, col. 1 (citing B. LEWIS, *THE EMERGENCE OF MODERN TURKEY*).

⁴⁴ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 12.

⁴⁵ *Id.* at 13.

⁴⁶ Ehrlich, *supra* note 21, at 1024.

⁴⁷ *Id.* at 1028; R. STEPHENS, *supra* note 32, at 171.

⁴⁸ *Crisis on Cyprus: 1974*, *supra* note 13, at 9.

⁴⁹ CYPRUS — Old Problem, New Crisis, *supra* note 36, at 28.

⁵⁰ *Crisis on Cyprus: 1974*, *supra* note 13, at 9.

⁵¹ F. Bunge, *supra* note 25, at 40; P. POLYVIU, *CYPRUS: THE TRAGEDY AND THE CHALLENGE* 115 (1975).

⁵² P. POLYVIU, *id.*

decline in the number of mixed villages, probably due to the establishment of separate schools for Greek Cypriot and Turkish Cypriot children respectively. This meant that small groups of minority families in a mixed village had to move to a "majority" village for their children's education.⁵³

Cyprus constituted "an ethnographical fruitcake in which the Greek and Turkish currants were mixed up in every town and village and often in every street."⁵⁴ In no portion of Cyprus of any considerable size were the Turkish Cypriots in the majority.⁵⁵ With the exception of some separate quarters in the main towns, the Turkish Cypriots had not been physically separated from the Greek. Even in towns where they lived apart, often Greeks and Turks worked in the same places.⁵⁶ It was not until after fighting erupted in December, 1963, that the Turks began to move from some of the mixed villages and to concentrate in the Nicosia region.⁵⁷

IV. THE DIPLOMATIC VARIABLES

A. *The Mainland Factors*

Historically, the political plight of Cyprus has been determined by the major powers on the mainland.⁵⁸ Most Greek Cypriots think of themselves as Greeks living on Cyprus. The Turkish Cypriot view of Turkey as their fatherland is the same.⁵⁹

The Greece-Turkey negotiations of 1959 saw the Greek position strong because eighty percent of Cyprus was Greek and a Greek Cypriot campaign for enosis had eroded the British will to hold Cyprus. Turkey's strong bargaining weapon, however, was the prospect of British agreement to taxim if an independence compromise was not reached.⁶⁰ Cyprus is only 43 miles from the Turkish coast,⁶¹ but the length of supply lines to Greece is greater than 500 miles.⁶²

Turkey has regarded the establishment of Greek rule over Cyprus as completing a circle about her southern border, and feared that Greece might exploit Cyprus as a potential springboard for attack;⁶³ Cyprus has been styled "the cork in the bottle of

⁵³ Worsley, *supra* note 23, at 8.

⁵⁴ Ehrlich, *supra* note 21, at 1091 (quoting FOLEY, LEGACY OF STRIFE: CYPRUS FROM REBELLION TO CIVIL WAR 87 (1964)).

⁵⁵ Trombetas, *supra* note 11, at 19.

⁵⁶ R. STEPHENS, *supra* note 32, at 213.

⁵⁷ *Id.* at 183.

⁵⁸ Trombetas, *supra* note 11, at 38.

⁵⁹ Ehrlich, *supra* note 21, at 1022.

A plebiscite among Greek Cypriots in 1949 must have shattered any British illusions about perpetual rule — ninety-six percent of the eligible voters favored union with Greece.

A year later the head of the Greek Orthodox Church in Cyprus died and a new leader, Archbishop Makarios III, was chosen. Only thirty-seven years old, he quickly became the leader of the Greek Cypriot people in secular as well as spiritual affairs. *Id.* at 1026.

⁶⁰ *Id.* at 1031. British Secretary of State for the Colonies Lennox-Boyd admitted before the House of Commons that it was Turkey's threatened taxim which obliged the Greek Cypriots to accept the independence settlement: "Had partition not been brought in we should never have had the settlement which we have reached." Trombetas, *supra* note 11, at 26-27 and 27 n.32 (quoting Hansard, Mar. 19, 1959, at 655).

⁶¹ Trombetas, *supra* note 11, at 36.

⁶² *Id.* at 36, 46.

⁶³ *Id.* at 38.

Iskenderun.”⁶⁴ At the time, the cost of a Turkish intervention in Cyprus on a scale requisite to impose partition against the will of the natives backed by Greece would have been unrealistically high; Turkey was unlikely to try one unless there was an attempt at enosis or a genocide of Turkish Cypriots.⁶⁵ The constitutional force accorded the Treaties of Guarantee and Alliance was not solely to protect the constitutional order in Cyprus but to meet the specific military needs of the three guarantor powers, particularly Britain and Turkey.⁶⁶

In short, the 1960 Constitution resulted from the politico-diplomatic interplay of population and geography. Robert Stephens found,

1. There are four times as many Greek Cypriots as Turkish Cypriots on the island.
2. Cyprus is ten times further from Greece than it is from Turkey.
3. There are four times as many Turks as there are Greeks. As a Turkish Cypriot leader put it to me: ‘Ethnographically our position is weak, geographically it is strong.’⁶⁷

The Constitution of Cyprus reflected the bargaining power of the interested parties.⁶⁸

Independence eliminated Britain as a major factor in Cyprus disputation but did not end such disputation; it temporarily removed Cyprus issues from the international scene and placed them in the category of domestic disputes.⁶⁹ Under the Treaty of Guarantee the Republic of Cyprus undertook to ensure its independence and refrain from participation in whole or part in any political or economic union with any state whatsoever.⁷⁰ The Treaty of Alliance called for Cypriot-Greek-Turkish cooperation to defend the island against aggression, and the Treaty of Establishment for British control and sovereignty over two military bases.⁷¹

For at least an interval during the implementation of the 1960 Constitution a favorable diplomatic climate obtained. During Cypriot President Makarios’ September 28-October 2, 1962, state visit to Greece, Greek leaders made clear that they aimed to keep out of controversial domestic issues in Cyprus and expressed confidence that the Turkish government wished to do likewise.⁷² In November 1962 Turkey extended Presi-

⁶⁴ Ehrlich, *supra* note 21, at 1092 (quoting N.Y. Times, Aug. 15, 1964, at 2, col. 2).

⁶⁵ R. STEPHENS, *supra* note 32, at 211.

⁶⁶ Evriviades, *supra* note 35, at 241.

⁶⁷ R. STEPHENS, *supra* note 32, at 210.

The Turkish Community of Cyprus are a small minority, but only in the immediate area of Cyprus itself. In a wider context, since they can always call upon Turkey to come to their assistance, they are part of the majority. Likewise with the Greek Cypriot Community. In Cyprus itself, the Greek Cypriots are the overwhelming majority of the population but in the strategically relevant area they are a very small and helpless minority, at the complete mercy of Turkey, as has been made abundantly clear in the recent crisis. Cyprus has always been a victim of geography, and it is to be seriously regretted that shortsightedness on the part of the Greek Cypriot Community and incredible distortion of our political priorities obscured this fact.

P. POLYVIU, *supra* note 51, at 95.

⁶⁸ S. KYRIAKIDES, *supra* note 31, at 166.

⁶⁹ Doumas, *supra* note 27, at 85. The Soviet Union always has opposed enosis because the Soviets speculate that leaving the matter to internal settlement could divide NATO and trigger war between Greece and Turkey. T. ADAMS & A. COTTRELL, *CYPRUS BETWEEN EAST AND WEST* 12-13 (1968).

⁷⁰ Thomas & Thomas, *supra* note 18, at 515.

⁷¹ *Id.*

⁷² CYPRUS — Old Problem, New Crisis, *supra* note 36, at 33 (citing The Times (London), Oct. 1, 1962).

dent Makarios an invitation for a state visit. Turkey impressed upon him that she would support the Makarios government so long as the provisions of the Cyprus independence agreements were implemented strictly.⁷³

B. *The Military Factors*

The sensitive web of diplomatic relationships may have influenced the President's 1963 decision not to simply abrogate the 1960 independence settlement or even to call for revision of all the related accords. Instead, he proposed only modification of the Constitution⁷⁴:

Looming over other potential Turkish reactions to a decision by the Archbishop was the possibility of Turkish military intervention under Article IV of the Treaty of Guarantee. That provision authorized each Guarantor Power, after consultation with the others, 'to take action with the sole aim of re-establishing the state of affairs created by the present Treaty.'⁷⁵

Great Britain had agreed to the Zurich proposals on several conditions, including British sovereignty over two base areas on Cyprus. The draft Treaty of Alliance called for a tripartite military headquarters on the Republic's territory with 950 troops from Greece and 650 troops from Turkey.⁷⁶ These forces were to be separate from the Cypriot national forces.⁷⁷

Under Article I the High Contracting Parties were "... to cooperate for their common defence and to consult together on the problems raised by defence."⁷⁸ Under Article II they undertook "... to resist any attack or aggression, direct or indirect, against the independence or the territorial integrity of the Republic of Cyprus."⁷⁹

Greece and Turkey were to maintain troops in Cyprus near the capital.⁸⁰ During the crisis of December 1963 the Turkish Army contingent of 650 men stationed in Cyprus pursuant to the Treaty moved from its camp and assumed a position in support of the Turkish Cypriot community.⁸¹ Simultaneously, the 950 man mainland Greek contingent stationed on Cyprus pursuant to that Treaty moved to assist the Greek Cypriots.⁸²

V. CONCURRENT MAJORITY POPULAR GOVERNMENT

Cyprus' history, her ethnic pluralism, and the mainland variables resulted in a Constitution based on the concurrent majority theory of popular government. A child of the eighteenth century American Revolution, concurrent majority theorist Senator Calhoun was a thoughtful proponent of popular rule:

⁷³ S. KYRIAKIDES, *supra* note 31, at 144.

⁷⁴ T. EHRLICH, *supra* note 28, at 46. "[I]n so far as an outside observer can determine, Archbishop Makarios was the decision-maker in a sense that was not true of any other leader discussed in this essay." *Id.* at 39-40 (Ehrlich's emphasis).

⁷⁵ *Id.* at 51.

⁷⁶ Ehrlich, *supra* note 21, at 1032; P. POLYVIU, *supra* note 51, at 16.

⁷⁷ F. Bunge, *supra* note 25, at 38.

⁷⁸ Evriviades, *supra* note 35, at 251.

⁷⁹ *Id.*

⁸⁰ Dumas, *supra* note 27, at 75.

⁸¹ S. KYRIAKIDES, *supra* note 31, at 145-46.

⁸² *Id.* at 146. It elsewhere was reported that Greece had 850 soldiers stationed in Cyprus. CYPRUS — Old Problem, New Crisis, *supra* note 36, at 39 (from N.Y. Herald Tribune, Dec. 26, 1963).

The right of suffrage, of itself, can do no more than give complete control to those who elect over the conduct of those they have elected. . . .⁸³

The more perfectly it does this, the more perfectly it accomplishes its ends; but in doing so, it only changes the seat of authority without counteracting, in the least, the tendency of the government to oppression and abuse of its powers.

If the whole community had the same interests so that the interests of each and every portion would be so affected by the action of the government that the laws which oppressed or impoverished one portion would necessarily oppress and impoverish all others — or the reverse — then the right of suffrage, of itself, would be all-sufficient to counteract the tendency of the government to oppression and abuse of its powers, and, of course, would form, of itself, a perfect constitutional government. . . .⁸⁴

But such is not the case.⁸⁵

On newly independent Cyprus the right of suffrage obtained, but this did not in itself preclude any tendency of the government to abuse its powers. The whole Cyprus community was widely felt to divide into a Greek majority faction and a Turkish minority faction, with a risk that this majority would tend to oppress the minority:

As, then, the right of suffrage, without some provision, cannot counteract this tendency of government, the next question for consideration is, What is that other provision? This demands the most serious consideration, for of all the questions embraced in the science of government it involves a principle, the most important and the least understood, and when understood, the most difficult of application in practice. It is, indeed, emphatically that principle which *makes* the constitution, in its strict and limited sense.

From what has been said, it is manifest that this provision must be of a character calculated to prevent any one interest or a combination of interests from using the powers of government to aggrandize itself at the expense of the others. . . . There is but one certain mode in which this result can be secured, and that is by the adoption of some restriction or limitation which shall so effectually prevent any one interest or combination of interests from obtaining the exclusive control of the government as to render hopeless all attempts directed to that end. There is, again, but one mode in which this can be effected, and that is by taking the sense of each interest or portion of the community which may be unequally and injuriously affected by the action of the government separately, through its own majority or in some other way by which its voice may be fairly expressed, and to require the consent of each interest either to put or to keep the government in action. This, too, can be accomplished only in one way, and that is by such an organism of the government — and, if necessary for the purpose, of the community also — as will, by dividing and distributing the powers of government, give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws or a veto on their execution.⁸⁶ (Calhoun's emphasis).

The government of Cyprus was finely geared toward dividing and distributing the

⁸³ J. CALHOUN, *A Disquisition on Government*, reprinted in 1 REPORTS AND PUBLIC LETTERS OF JOHN C. CALHOUN 1, 13 (R. Crallé ed. 1968).

⁸⁴ *Id.* at 14-15.

⁸⁵ *Id.* at 15.

⁸⁶ *Id.* at 24-25 (Calhoun's emphasis).

powers of government to give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws or a veto on their execution. Calhoun would have approved the utilization of his concurrent majority theory not merely through extralegal political practice but as institutionalized in the Constitution:

Such an organism as this, combined with the right of suffrage, constitutes, in fact, the elements of constitutional government. The one, by rendering those who make and execute the laws responsible to those on whom they operate, prevents the rulers from oppressing the ruled; and the other, by making it impossible for any one interest or combination of interests, or class, or order, or portion of the community to obtain exclusive control, prevents any one of them from oppressing the other.⁸⁷

It is this negative power — the power of preventing or arresting the action of the government, be it called by what term it may, veto, interposition, nullification, check, or balance of power — which in fact forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results from the concurrent majority. Without this there can be no negative, and without a negative, no constitution. The assertion is true in reference to all constitutional governments, be their forms what they may. It is, indeed, the negative power which makes the constitution, and the positive which makes the government.⁸⁸

The concurrent majority system in the Cyprus Constitution served to prevent either the Greek or Turkish portion of the community from obtaining exclusive control and oppressing the other.

Numerous critics have averred, however, that the Cyprus Constitution frustrated national conciliation and facilitated confrontation. Christina K. Navarro noted, "The government dualism, so rigidly provided for in the constitution, merely served to reinforce ethnic separatism between the Greek and Turkish Cypriots."⁸⁹ Political scientist Christos L. Doulmas argued, "In retrospect, it seems that rational men could not have allowed such a scheme to be implemented."⁹⁰ Oxford lecturer in law Polyvios B. Polyviou believes, "The 1960 Settlement could never have worked, whatever the patience or the spirit of compromise on either or both sides."⁹¹

Contrast those claims with Calhoun's contention that the concurrent majority is a socially integrative device, and not a conflict generating device:

It may be readily inferred, from what has been stated, that the effect of organism is neither to supersede nor diminish the importance of the right of suffrage, but to aid and perfect it. The object of the latter is to collect the sense of the community. . . . It is only when aided by a proper organism that it can collect the sense of the entire community, of each and all its interests — of

⁸⁷ *Id.* at 25-26.

⁸⁸ *Id.* at 35.

⁸⁹ Navarro, *Cyprus and the U.N.: A Case for Non-Military Collective Measures*, 54 IND. L.J. 129, 131 (1978).

⁹⁰ Doulmas, *supra* note 27, at 78.

⁹¹ P. POLYVIU, *supra* note 51, at 38. "[T]he relevant provisions increased rather than reduced tension, did nothing to foster cooperation between the two Communities and, as a result, constituted in their totality a peculiarly structured and difficult to operate constitutional anomaly with no parallel elsewhere." P. POLYVIU, *CYPRUS IN SEARCH OF A CONSTITUTION: CONSTITUTIONAL NEGOTIATIONS AND PROPOSALS, 1960-1975* 20 (1976).

each, through its appropriate organ, and of the whole through all of them united. . . .⁹²

It results, from what has been said, that there are two different modes in which the sense of the community may be taken: one simply by the right of suffrage, unaided; the other, by the right through a proper organism. . . . But one regards numbers only and considers the whole community as a unit having but one common interest throughout, and collects the sense of the greater number of the whole as that of the community. The other, on the contrary, regards interests as well as numbers — considering the community as made up of different and conflicting interests, as far as the action of the government is concerned — and takes the sense of each through its majority or appropriate organ, and the united sense of all as the sense of the entire community. The former of these I shall call the numerical or absolute majority, and the latter, the concurrent or constitutional majority. I call it the constitutional majority because it is an essential element in every constitutional government, be its form what it may.⁹³

If the numerical majority were really the people, and if to take its sense truly were to take the sense of the people truly, a government so constituted would be a true and perfect model of a popular constitutional government; and every departure from it would detract from its excellence. But as such is not the case, as the numerical majority, instead of being the people, is only a portion of them, such a government, instead of being a true and perfect model of the people's government, that is, a people self-governed, is but the government of a part over a part — the major over the minor portion.⁹⁴

Political theorist Vukan Kuic as recently as 1983 agreed that the concurrent majority can be an integrating mechanism: "[W]ith minds open to the ideal of brotherhood of men, we hardly can fail to recognize that Calhoun's principle of concurrent majority actually improves on Lincoln's definition of democracy by requiring it to be a government of all the people for all the people."⁹⁵ As Calhoun put it: "I am in favor of the government of the whole; the only really and truly popular government — a government based on the concurrent majority — the joint assent of all the parts, through their respective majority of the whole."⁹⁶ Calhoun anticipates and transcends Lincoln by endorsing government of

⁹² J. Calhoun, *supra* note 83, at 27.

⁹³ *Id.* at 28.

⁹⁴ *Id.* at 30. A closely parallel discussion of Calhoun's concurrent majority obtains in Swan, *Quasi-Constitutional Developments in Northern Ireland*, 13 CAL. W. INT'L L. J. 378 (1983).

⁹⁵ Kuic, *John C. Calhoun's Theory of the "Concurrent Majority"*, 69 A.B.A.J. 482, 486 (1983).

In 1830 Daniel Webster spoke about "the people's government, made for the people, made by the people, and answerable to the people."

It's a summary that was picked up by other writers and speakers until it was distilled in Abraham Lincoln's Gettysburg address into the simple and familiar words that government officials should read every day.

Thermal, *Secrecy in government is disdain for the electorate*, Sunday News Journal (Wilmington, Del.), Feb. 28, 1984, at C9, col. 1.

⁹⁶ R. CURRENT, JOHN C. CALHOUN, 145-46 (1966) (citing LXXII Niles Nat'l Register, May 8, 1847, at 148).

By giving to each interest, or portion, the power of self-protection, all strife and struggle between them for ascendancy is prevented, and thereby not only every feeling calculated to weaken the attachment to the whole is suppressed, but the individual and the social feelings are made to unite in one common devotion to country. Each sees and feels that it can best promote its own prosperity by conciliating the good will and promoting the prosperity of the others. And hence there will be diffused throughout

all the people, by all the people, and for all the people.⁹⁷

VI. THE CONCURRENT MAJORITY ON CYPRUS

The 1960 Constitution of Cyprus has been compared to a masterfully jewelled watch.⁹⁸ It has been characterized as the most rigid on the globe; it surely was the most detailed; and with the possible exception of Kenya's Constitution, it was the most complicated.⁹⁹ Dr. Galo Plaza, eventually appointed Mediator by the Secretary General of the United Nations following the Cyprus crisis of December 1963, called the 1960 Constitution a "constitutional oddity."¹⁰⁰ Because the island's problems were unlike those facing other constitution makers, this document is of a unique character;¹⁰¹ it is often styled *sui generis*.¹⁰²

Calhoun, an experienced national¹⁰³ as well as sectional¹⁰⁴ politician, was not impractical in delineating the theory of the concurrent majority. He warned that a successful Constitution must fit the nature of the relevant population. Writing as if alert to Cyprus' sensitive ties to both Greece and Turkey, he heeded all of the multitudinous relationships, external as well as internal, differentiating one people from another:

A constitution, to succeed, must spring from the bosom of the community and be adapted to the intelligence and character of the people and all the

the whole community kind feelings between its different portions and, instead of antipathy, a rivalry amongst them to promote the interests of each other, as far as this can be done consistently with the interest of all. Under the combined influence of these causes, the interests of each would be merged in the common interests of the whole; and thus the community would become a unit by becoming the common center of attachment of all its parts. And hence, instead of faction, strife, and struggle for party ascendancy, there would be patriotism, nationality, harmony, and a struggle only for supremacy in promoting the common good of the whole.

J. CALHOUN, *supra* note 83, at 48-49.

⁹⁷ Dr. Trombetas quotes Lincoln approvingly in the Cyprus context: " 'Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy, or despotism in some form, is all that is left.' " Trombetas, *supra* note 11, at 30 n.37 (quoting A. Lincoln, *First Inaugural Address* (Mar. 4, 1861), *reprinted in* 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 262, 268 (R. Basler ed. 1953)).

The reader may decide whether pre-December 1963 Cyprus concurrent majority government afforded anarchy, and whether the post-December 1963 Cyprus government constituted despotism.

⁹⁸ Adams, *supra* note 29, at 475.

The Constitution entered into effect on August 16, 1960, the day Cyprus became independent. At no time was it ever submitted to popular referendum or plebiscite by the electorate or to ratification by any directly or indirectly elected representative legislature. It remained in force in the republic in mid-1979, although several of its original provisions were modified by unilateral Greek Cypriot action in January 1964.

F. Bunge, *supra* note 25, at 156.

⁹⁹ C. TORNARITIS, CYPRUS AND ITS CONSTITUTIONAL AND OTHER LEGAL PROBLEMS 2D 63 (1980) (citing S. DE SMITH, THE NEW COMMONWEALTH AND ITS CONSTITUTIONS 285 (1964)).

¹⁰⁰ Z. NEDJATIGIL, *supra* note 30, at 13.

¹⁰¹ Ehrlich, *supra* note 21, at 1037 (citing YDIT, INTERNATIONALIZED TERRITORIES 81 (1961)).

¹⁰² P. POLYVIOU, *supra* note 51, at 105; P. POLYVIOU, CYPRUS: CONFLICT AND NEGOTIATION 1960-1980 37 (1980); P. POLYVIOU, *supra* note 91, at 13, 25, 53. "In S. DE SMITH, NEW COMMONWEALTH AND ITS CONSTITUTIONS 282-296 (1964), the author describes the constitutional arrangements in Cyprus under the title, *Cyprus: Sui Generis*." Evriviades, *supra* note 35, at 241 n.67.

¹⁰³ J. WILTSE, JOHN C. CALHOUN: NATIONALIST, 1782-1828 (1944).

¹⁰⁴ J. WILTSE, JOHN C. CALHOUN: SECTIONALIST, 1840-1850 (1951).

multifarious relations, internal and external, which distinguish one people from another. If it does not, it will prove in practice to be not a constitution, but a cumbrous and useless machine which must be speedily superseded and laid aside for some other more simple and better suited to their condition.

It would thus seem almost necessary that governments should commence in some one of the simple and absolute forms which, however well suited to the community in its earlier stages, must in its progress lead to oppression and abuse of power and finally to an appeal to force — to be succeeded by a military despotism — unless the conflicts to which it leads should be fortunately adjusted by a compromise which will give to the respective parties a participation in the control of the government, and thereby lay the foundation of a constitutional government to be afterwards matured and perfected. Such governments have been, emphatically, the product of circumstances.¹⁰⁵

The pre-1960 differences between Greek and Turkish Cypriots were to be adjusted by compromises, found in the Constitution, to grant the respective parties participation in controlling the government.

Commentators have agreed that the Cyprus Constitution was devised with an eye to the multifarious relations, internal and external, of the Cypriots. Found T.W. Adams of its framers: "It is apparent that these legalists did heed the warnings of history, inasmuch as they were wise enough not to force traditional enmities [sic] immediately together in the institutional framework of the first Republic. Thus, the constitution recognized and perpetuated the historic separateness of the two ethnic communities of the island."¹⁰⁶ the island."¹⁰⁶

New York University's Dr. Kemal H. Karpat agreed:

The Constitution itself reflects the communal structure of Cyprus as it existed for [sic] centuries. It recognized the basic fact that the Greek and Turkish communities had co-existed peacefully as separate entities and legalized it. Communal organization has been the way of life in many areas of the Middle East. Communal organization when not beset by unrestrained nationalist ambitions has succeeded in creating a social balance and peace in parts of the region.¹⁰⁷

A. *The Concurrent Majority Cyprus Legislature*

The Constitution made the Republic a unitary state in form, but the community concepts thereof incorporated significant features of a federal arrangement within its institutional structure.¹⁰⁸ Article 86 provides that Cyprus' Greek and Turkish Com-

¹⁰⁵ J. CALHOUN, *supra* note 83, at 79.

¹⁰⁶ Adams, *supra* note 29, at 475-76.

¹⁰⁷ Karpat, *supra* note 12, at 35, 41. "[T]he 1960 settlement represented an imaginative resolution of many difficult problems. Given patience and a spirit of compromise on each side, there seems no reason why it could not have worked. It was not a model of draftsmanship, but viewing the circumstances in which it was prepared, more could hardly have been expected." Ehrlich, *supra* note 21, at 1039. "Despite substantial weaknesses, the settlement did represent an imaginative resolution of many difficult problems. Given patience and a spirit of compromise on each side, it might have worked. It is not a model of draftsmanship; but, viewing the circumstances, no more could have been expected." T. EHRLICH, *supra* note 28, at 38. "For about two and a half years, the 1960 settlement worked reasonably well. The constitutional machinery for keeping the peace between Greek and Turkish Cypriots did just that." *Id.* at 41.

¹⁰⁸ Trombetas, *supra* note 11, at 14-15, 29. Contends William H. Riker: "The rule for identifica-

munities respectively are to each elect a Communal Chamber.¹⁰⁹ Not dissimilarly, the Constitution of stable, prosperous Belgium provides for a Council and an Executive of Belgium's French community and a Council and an Executive of Belgium's Flemish community.¹¹⁰

The competence of the Communal Chambers as outlined in Article 87 (1) primarily includes:

- (a) all religious matters;
- (b) all educational, cultural and teaching matters;
- (c) personal status;
- (d) the composition and instances . . . of courts dealing with civil disputes relating to personal status and to religious matters;
- . . .
- (f) imposition of personal taxes and fees on members of their respective Community in order to provide for their respective needs and for the needs of bodies and institutions under their control as in Article 88 provided;
- (g) in matters where subsidiary legislation in the form of regulations or by-laws within the framework of the laws relating to municipalities will be necessary to enable a Communal Chamber to promote the aims pursued by municipalities composed solely of members of its respective Community;
- (h) in matters relating to the exercise of the authority of control if producers' and consumers' co-operatives and credit establishments and of supervision in their functions of municipalities consisting solely of their respective Community, vested in them by this Constitution.¹¹¹

Article 88 also provides for direct taxation by a Communal Chamber of its own community members.¹¹² Not dissimilar to the powers of Cyprus' Communal Chambers are the powers to regulate by decree of Belgium's Community Councils.¹¹³

The financial independence of each Community from the national government is reinforced by Article 108:

(1) The Greek and the Turkish Communities shall have the right to receive subsidies from the Greek or the Turkish Government respectively for institutions of education, culture, athletics and charity belonging to the Greek or the Turkish Community respectively.

(2) Also where either the Greek or the Turkish Community considers

tion is: A constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere." W. RIKER, *FEDERALISM* 11 (1964).

Avers Prof. K.C. Wheare of Oxford University: "Does a system of government embody predominantly a division of powers between general and regional authorities, each of which, in its own sphere, is co-ordinate with the others and independent of them? If so, that government is federal." 4 K. WHEARE, *FEDERAL GOVERNMENT* 33 (1964). Wheare's definition of federal government has "secured the most support" of all such definitions of federal government. P. POLYVIU, *supra* note 91, at 393; P. POLYVIU, *supra* note 102, at 222.

¹⁰⁹ CYPRUS CONST. art. 86.

¹¹⁰ BELG. CONST. art. 59*bis*, §1.

¹¹¹ CYPRUS CONST. art. 87(1)(a)(b)(c)(d)(f)(g) and (h).

¹¹² CYPRUS CONST. art. 88.

¹¹³ BELG. CONST. art. 59*bis*, §2-§4*bis*.

that it has not the necessary number of schoolmasters, professors or clergymen . . . for the functioning of its institutions, such Community shall have the right to obtain and employ such personnel to the extent strictly necessary to meet its needs as the Greek or the Turkish Government respectively may provide.¹¹⁴

There is no mention in the Constitution of any conflict of interest or incompatibility in holding offices simultaneously in the House of Representatives and in a Communal Chamber.¹¹⁵ And again in stable Belgium, indeed, the Flemings — but not the Walloons — have so opted that their Flemish Council and Executive exercise the powers of both Belgium's (language bloc-oriented) Flemish Community and of her (geography-linked) Flemish Region.¹¹⁶

Prior to the coming into force of the 1960 Constitution, the judicial system had for many years been functioning extremely well. Justice was administered impartially by both Greek Cypriot and Turkish Cypriot judges on not communal, but jurisdictional criteria.¹¹⁷

As Ehrlich points out,¹¹⁸ under the 1960 Constitution the Supreme Constitutional Court is to be comprised of a Greek Cypriot, a Turkish Cypriot, and a neutral President not to be a Cypriot, Briton, Greek or Turk.¹¹⁹ It is given jurisdiction to adjudicate finally¹²⁰ over numerous Constitutional issues referred to it by the President or Vice-President,¹²¹ over Constitutional issues raised in other courts,¹²² and over any complaint that an administrative act or omission was unconstitutional, unlawful, or an abuse of power.¹²³ The Supreme Constitutional Court could return measures to the Cyprus House of Representatives for reconsideration on the ground that they were discriminatory.¹²⁴ Article 125 (3) provides for the Supreme Constitutional Court to render final determinations upon Public Service Commission deadlocks over filling public service positions.¹²⁵

The separation of powers doctrine is a basis of the Constitution,¹²⁶ although that

¹¹⁴ CYPRUS CONST. art. 108. The various levels of Cyprus government left her overgoverned. Doumas, *supra* note 27, at 78-79. This is the case today in stable little Belgium. J. FITZMAURICE, *THE POLITICS OF BELGIUM: CRISIS AND COMPROMISE IN A PLURAL SOCIETY* 137 (1983).

¹¹⁵ Adams, *supra* note 29, at 480. However, Articles 70 and 101 appear contra to Adams. CYPRUS CONST. arts. 70 and 101.

¹¹⁶ "The Flemish Community and Region have common institutions or, put another way, the Flemish Council and Executive exercise the powers of both the Flemish Community and the Region." J. FITZMAURICE, *supra* note 114, at 128-29. "Regions are a geographical concept, whereas the Communities are linguistic and cultural entities." *Id.* at 111.

Yet as Catholic University of Louvain Faculty of Law Prof. Francis Delperee explained in Nicosia at the April 30-May 4, 1979, International Law Conference on Cyprus:

And finally I would add, Mr. President, and this was the end of your question, I would add that the institutions of Belgium are not yet, and are far from being, a model for exportation. We have many problems. We are in the midst of revising our Constitution, and I hope that you will succeed with yours before we are through with ours.

CYPRUS BAR COUNCIL, *INTERNATIONAL LAW CONFERENCE ON CYPRUS* 230-31 (1981) (translation by M. Hirsch, J.D. cand., The Delaware Law School).

¹¹⁷ P. POLYVIU, *supra* note 51, at 128.

¹¹⁸ Ehrlich, *supra* note 21, at 1035-36.

¹¹⁹ CYPRUS CONST. art. 133, (1) and (3).

¹²⁰ CYPRUS CONST. art. 136.

¹²¹ CYPRUS CONST. arts. 137-143.

¹²² CYPRUS CONST. art. 144.

¹²³ CYPRUS CONST. art. 146.

¹²⁴ CYPRUS CONST. arts. 137-138.

¹²⁵ CYPRUS CONST. art. 125 (3).

¹²⁶ Explained President Makarios in his Proposals to Amend the Cyprus Constitution:

principle was not enshrined impractically in the instrument.¹²⁷ The House of Representatives included thirty-five Greek Cypriot and fifteen Turkish Cypriot Representatives.¹²⁸ On July 31, 1960, in the first national elections to the new House of Representatives, thirty of the Greek Cypriot seats went to the Patriotic Front, which supported President Makarios. Fifteen seats were won by the Turkish National Party, which supported Vice-President Kuchuk.¹²⁹

This House was to exercise all legislative powers but those expressly reserved to the Communal Chambers.¹³⁰ There is also a concurrent majority feature in Article 78(2):

Any modification of the Electoral Law and the adoption of any law relating to the municipalities and of any law imposing duties or taxes shall require a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote.¹³¹

B. *The Concurrent Majority Cyprus Executive*

Concurrent majority features appear in the executive branch also. Executive power not explicitly reserved to the President or Vice-President rested in the Council of Ministers.¹³² The Council was comprised of ten Greek and three Turkish Cypriots¹³³ appointed by the President¹³⁴ and the Vice-President respectively.¹³⁵

Council of Ministers decisions were by simple majority,¹³⁶ subject to the veto of Council decisions and of House of Representatives measures by either or both the President¹³⁷ and the Vice-President.¹³⁸ These vetoes allowed for government through a

The Constitution of Cyprus has been based on the doctrine of separation of powers between the Executive and the Legislature. The balance between them must be carefully maintained and friction avoided, if it is to work.

INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 21.

¹²⁷ "It must be noticed that the Constitution recognizes and protects the independence of the House in a number of ways, e.g. by not granting the power to dissolve the House either to the President or the Vice-President; but, of course, it must not be assumed that some kind of impractical 'separation of powers' doctrine is thereby enshrined in the Constitution." P. POLYVIU, *supra* note 51, at 21.

¹²⁸ CYPRUS CONST. art. 62.

¹²⁹ R. STEPHENS, *supra* note 32, at 171.

¹³⁰ CYPRUS CONST. art. 61.

¹³¹ CYPRUS CONST. art. 78(1) and (2).

¹³² CYPRUS CONST. art. 54.

¹³³ CYPRUS CONST. art. 46.

¹³⁴ CYPRUS CONST. art. 48(a).

¹³⁵ CYPRUS CONST. art. 49(a).

¹³⁶ CYPRUS CONST. art. 46. This Article opens: "The executive power is ensured by the President and the Vice-President of the Republic." "The word 'ensure' appears to have been taken from the concept of the French public law." C. TORNARITIS, *supra* note 99, at 45 n.100.

¹³⁷ CYPRUS CONST. art. 48(d) and (f), 50 and 57 (3).

¹³⁸ CYPRUS CONST. art. 49(d) and (f), 50 and 57(3).

The cabinet discussions were conducted in English, the common language of the two communities. Kúchúk, in particular, whose foreign language is French rather than English, would find it difficult to keep up with the proceedings, especially the quick Greek jokes which could have seemed, however wrongly, to be at the Turks' expense. A proud and touchy Turkish minister, remembering who had once ruled the island, might well come out of a cabinet meeting fuming and muttering that the Turks used to skin archbishops alive in the old days. It must also have been difficult for the Greek Cypriots, who had never ruled themselves before, to restrain the impulse to show off their new power and put the Turks in their place.

R. STEPHENS, *supra* note 32, at 173.

concurrent majority of the Greek Cypriot national majority and Turkish Cypriot minority, inasmuch as Article One provided in full: "The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided."¹³⁹

Article 59 (3) provides: "The Ministers shall hold office in the case of the Greek Ministers until their appointment is terminated by the President of the Republic and in the case of the Turkish Ministers until their appointment is terminated by the Vice-President of the Republic."¹⁴⁰ The Greek Cypriot Ministers derived their authority from the President; the Turkish Cypriot Ministers from the Vice-President.¹⁴¹ These executive branch arrangements have no precise parallel elsewhere.¹⁴² "The constitution supposedly establishes a 'presidential regime,' but this must be viewed rather skeptically. Perhaps it would be more correct to describe it as a Vice-Presidential one, so inflated are the powers of the Turkish Vice-President. . . ."¹⁴³

C. Calhoun and the Cyprus Executive

The Cyprus Constitution provides for the election of the President and Vice-President by the Greek and Turkish Communities respectively. Calhoun proposed that there be not one U.S. President, but two U.S. federal executive officers to be elected by the Northern and Southern sections respectively.¹⁴⁴

Article 46 of the Cyprus Constitution in relevant part provides: "One of the following Ministries that is to say the Ministry of Foreign Affairs, the Ministry of Defence or the Ministry of Finance, shall be entrusted to a Turkish Minister. If the President and the Vice-President of the Republic agree they may replace this system by a system of rotation."¹⁴⁵

Even as Article 46 looks to the likelihood of the Foreign Minister (and/or Defense Minister) being responsible to the Vice-President, so Calhoun suggested that one of the two U.S. federal executive officers be responsible for foreign affairs, and the other for domestic affairs. He suggested of the national executive branch:

¹³⁹ CYPRUS CONST. art. 1. The Constitution adds:

In the event of a temporary absence or a temporary incapacity to perform the duties of the President or of the Vice-President of the Republic, the President or the Vice-President of the House of Representatives . . . shall act for the President or the Vice-President of the Republic respectively during such temporary absence or temporary incapacity.

CYPRUS CONST. art. 36(2). For purposes of deputizing and replacing the President, the Turkish Cypriot Vice-President was not second in line as is generally accepted in Presidential systems. S. KYRIAKIDES, *supra* note 31, at 59. This is the significance of Point Two of President Makarios' 1963 Proposals to Amend the Cyprus Constitution. INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 21.

¹⁴⁰ CYPRUS CONST. art. 59(3).

¹⁴¹ S. KYRIAKIDES, *supra* note 31, at 63.

¹⁴² P. POLYVIU, *supra* note 51, at 26.

¹⁴³ P. POLYVIU, *supra* note 102, at 20.

¹⁴⁴ J. CALHOUN, *A Discourse on the Constitution and Government of the United States*, reprinted in 1 REPORTS AND PUBLIC LETTERS OF JOHN C. CALHOUN 109, 391-92 (R. Cralle ed. 1968). The dying Calhoun had served as a South Carolina state legislator, as U.S. Congressman, Senator, Secretary of War, Secretary of State, and Vice-President. Whom do you think he saw in his mind's eye as the joint U.S. President from the South?

¹⁴⁵ CYPRUS CONST. art. 46.

[I]ts powers, instead of being vested, as they now are, in a single officer, should be vested in two; to be so elected as that the two should be constituted the special organs and representatives of the respective sections in the executive department of the government, and requiring each to approve all the acts of Congress before they shall become laws. One might be charged with the administration of matters connected with the foreign relations of the country, and the other of such as were connected with its domestic institutions, the selection to be decided by lot.¹⁴⁶

Calhoun might have welcomed the unparalleled Cyprus Constitutional arrangement whereby Greek Cypriot Ministers were to derive authority from the President, and the Turkish Cypriot Ministers from the Vice-President:

But it is objected that a plural executive necessarily leads to intrigue and discord among its members, and that it is inconsistent with prompt and efficient action. This may be true when they are all elected by the same constituency and may be a good reason, where this is the case, for preferring a single executive, with all its objections, to a plural executive. But the case is very different where they are elected by different constituencies having conflicting and hostile interests, as would be the fact in the case under consideration. Here the two would have to act concurring in approving the acts of Congress and separately in the sphere of their respective departments. The effect, in the latter case, would be to retain all the advantages of a single executive, as far as the administration of the laws were concerned; and, in the former, to insure harmony and concord between the two sections and, through them, in the government.¹⁴⁷

Did the concurrent majority formulae in the Cyprus Constitution lead to discord inconsistent with efficient action? There were four great intercommunal policy divisions from August 1960 to December 1963: 1. formation of a Cypriot army; 2. public service appointments; 3. Cypriot personal income tax legislation; and 4. the establishment of separate Municipalities.¹⁴⁸

¹⁴⁶ J. CALHOUN, *supra* note 144, at 109, 392.

¹⁴⁷ *Id.* at 394-95. A dual federal executive was suggested relative to the proposed Second World War union of the U.S. and the British Commonwealth. C. STREIT, *UNION Now WITH BRITAIN* 42-45 (1941).

The reports of the mid-September 1983 final meeting of the Central Committee of Marxist Grenada's New Jewel Movement disclose that a Central Committeeman called upon to explain his vote against a two-person party leadership replied that: "He is not clear how the dialectics will unfold. He said that he has not seen it anywhere in the science." Krauthammer, *Grenada and the End of Revolution*, *NEW REPUBLIC*, Jan. 30, 1984, at 16, 17. The absence of dual-leadership theory in Marxism-Leninism contrasts sharply with its presence in liberal political theory. Wrote Leon Trotsky: "Lenin's methods lead to this: the party organization at first substitutes itself for the party as a whole; then the Central Committee substitutes itself for the organization; and finally a single 'dictator' substitutes himself for the Central Committee. . . ." I. DEUTSCHER, *THE PROPHET ARMED* 90 (1954).

¹⁴⁸ T. EHRLICH, *supra* note 28, at 43-45; Adams, *supra* note 29, at 484-86; S. KYRIAKIDES, *supra* note 31, at 77-103; Ehrlich, *supra* note 21, at 1041-43.

VII. THE CYPRIOT ARMY VETO

A. *The Evidence: Calhoun in the Dock*

As early as March 2, 1961, the Ministry of Defense issued a proclamation of its readiness to accept its initial enlistees.¹⁴⁹ On the first enlistment date, 51 Greek Cypriots and 59 Turkish Cypriots went to the enlistment centers.¹⁵⁰

The Council of Ministers voted to establish an army wherein soldiers from the Greek and Turkish communities would be integrated.¹⁵¹ The Turkish Cypriots argued that it would be difficult for Greek and Turkish Cypriot troops to be quartered together in view of their linguistic and religious differences.¹⁵² The Turkish Cypriot position was that the battalions could be mixed,¹⁵³ but Vice-President Kuchuk wanted separate units in elements as large as a military company (some 150 men).¹⁵⁴ Dr. Kuchuk vetoed the Council decision under his Article 49(d)¹⁵⁵ and Article 50¹⁵⁶ Vice-Presidential authority.

The 1961 failure of the Constitutional administration of Cyprus to develop a Cypriot army might be thought conclusive evidence against the concurrent majority principle, belying these sunny promises of former U.S. Secretary of War Calhoun:

The diversity of opinion is usually so great on almost all questions of policy that it is not surprising, on a slight view of the subject, it should be thought impracticable to bring the various conflicting interests of a community to unite on any one line of policy, or that a government founded on such a principle would be too slow in its movements and too weak in its foundation to succeed in practice. But plausible as it may seem at the first glance, a more deliberate view will show that this opinion is erroneous. It is true that, when there is no urgent necessity, it is difficult to bring those who differ to agree on any one line of action. Each will naturally insist on taking the course he may think best, and, from pride of opinion, will be unwilling to yield to others. But the case is different when there is an urgent necessity to unite on some common course of action, as reason and experience both prove. When something *must* be done — and when it can be done only by the united consent of all — the necessity of the case will force to a compromise, be the cause of that necessity what it may. On all questions of acting, necessity, where it exists, the overruling motive, and where, in such cases, compromise among the parties is an indispensable condition to acting, it exerts an overruling influence in predisposing them to acquiesce in some one opinion or course of action.¹⁵⁷ (Calhoun's emphasis).

The necessity of an army might seem a properly overriding influence toward action. Does not failure to raise an army prove concurrent majority government too weak in its foundation to succeed in practice?

¹⁴⁹ S. KYRIAKIDES, *supra* note 31, at 93.

¹⁵⁰ *Id.* at 93 n.57 (citing Eleftheria (Nicosia), Mar. 3, 1961).

¹⁵¹ Ehrlich, *supra* note 21, at 1041.

¹⁵² S. KYRIAKIDES, *supra* note 31, at 93.

¹⁵³ *Id.*

¹⁵⁴ Adams, *supra* note 29, at 485.

¹⁵⁵ CYPRUS CONST. art. 49 (d).

¹⁵⁶ CYPRUS CONST. art. 50.

¹⁵⁷ J. CALHOUN, *supra* note 83, at 64-65.

B. *The Verdict*

When Vice-President Kuchuk in October 1961 exercised his Constitutional veto to halt the raising of integrated forces, "Makarios then stated that the country could not afford an army anyway."¹⁵⁸ As President Makarios himself framed the problem as late as the close of 1963 in his Proposals to Amend the Cyprus Constitution:

Under the Constitution the Army of the Republic must consist of 60% Greeks and 40% Turks. The Council of Ministers, by majority, decided that the organisational structure of the Army should be based throughout on mixed units comprising both Greeks and Turks. The Vice-President, who wanted the structure to be based on separate units of Greeks and Turks, exercised his right of veto against the above decision of the Council with the result that there is no decision on this matter and the Army has remained ineffective.

In the case of the Army no great harm has resulted, since it is doubtful whether the Republic can really afford its expansion to 2,000 men at present and cope simultaneously with the heavy financial burdens of economic development and expansion of educational and social services. But it is easy to envisage situations where exercise of the veto could result in more far-reaching and damaging repercussions.¹⁵⁹

In short, the President here admits that no great harm resulted from the army veto. By no means was the Calhoun promise of acquiescence in the face of necessity disproved. The Army veto, which *in vacuo* sounds catastrophic, proved only thrifty. As even harsh critic of the Constitution Adams conceded in his *The First Republic of Cyprus: A Review of an Unworkable Constitution*, "In view of the tripartite Treaties of Guarantee and Alliance, a Cypriot army was far from essential."¹⁶⁰

Former War Secretary Calhoun might actually have applauded the veto of a nonessential army. He emphasized that a national military complex can present a perilous apple of discord encouraging avaricious factions to struggle desperately for the lucrative control of the government.¹⁶¹

¹⁵⁸ F. Bunge, *supra* note 25, at 160.

¹⁵⁹ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 21.

¹⁶⁰ Adams, *supra* note 29, at 486.

¹⁶¹ The advantages of possessing the control of the powers of the government, and thereby of its honors and emoluments, are, of themselves, exclusive of all other considerations, ample to divide even such a community [as one without divergent interests] into two great hostile parties.

In order to form a just estimate of the full force of these advantages, without reference to any other consideration, it must be remembered that government — to fulfill the ends for which it is ordained, and more especially that of protection against external dangers — must in the present condition of the world be clothed with powers sufficient to call forth the resources of the community and be prepared at all times to command them promptly in every emergency which may possibly arise. For this purpose large establishments are necessary, both civil and military (including naval, where, from situation, that description of force may be required), with all the means necessary for prompt and effective action, such as fortifications, fleets, armories, arsenals, magazines, arms of all descriptions, with well-trained forces in sufficient number to wield them with skill and energy whenever the occasion requires it. The administration and management of a government with such vast establishments must necessarily require a host of employees, agents, and officers — of whom many must be vested with high and responsible trusts and occupy exalted stations accompanied with much

So hefty was the military role of treaty partner Great Britain that at the end of 1960 it was reported that until the close of 1965 the program of completing British military bases (to be launched in early 1961) would provide jobs for thousands of Cypriots, and that this, plus the spending of British troops stationed in Cyprus (estimated at £10,000,000 yearly), would exceed the total revenue of the Cyprus government at its 1960 level.¹⁶² As late as August 21, 1963, the President accused London's colonial rule of having "rendered the Cyprus economy insecure by making it dependent to a large extent on military expenditure, commerce and colonial services."¹⁶³

Actually, Makarios dropped any pressure on the U.K. to abandon its bases; his only complaint on this score between 1960 and 1963 arose when the British cut the strength of their garrison and he requested they bear in mind the effect upon the local living standard.¹⁶⁴ Within a year after London had for six months haggled to hold nearly a hundred square miles for their bases they considered cutting back to seventy square miles, but were advised otherwise for fear of alarming Greek Cypriots.¹⁶⁵

VIII. PUBLIC SERVICE APPOINTMENTS

The Evidence: Calhoun in the Dock

Under Article 125 (1), the Public Service Commission was the appointing authority to the Public Service;¹⁶⁶ seven Commissioners were to be Greek and three Turkish Cypriots.¹⁶⁷ The Public Service was to be 70 percent Greek and 30 percent Turkish Cypriot.¹⁶⁸

Commission determinations of appointment or promotion to a new or vacant post were to be by simple majority vote, such simple majority vote always to include at least two Turkish Cypriots. But when the question related solely to a Greek Cypriot the majority was to include at least four Greek members. In selection of a Turkish Cypriot, the unanimous recommendation of three Turkish members was to bind the Commission; in

influence and patronage. To meet the necessary expenses, large sums must be collected and disbursed, and for this purpose heavy taxes must be imposed, requiring a multitude of officers for their collection and disbursement. The whole united must necessarily place under the control of government an amount of honors and emoluments sufficient to excite profoundly the ambition of the aspiring and the cupidity of the avaricious, and to lead to the formation of hostile parties and violent party conflict and struggles to obtain the control of the government.

J. CALHOUN, *supra* note 83, at 17-18.

¹⁶² CYPRUS — Old Problem, New Crisis, *supra* note 36, at 25-26.

¹⁶³ *Id.* at 29.

¹⁶⁴ R. STEPHENS, *supra* note 32, at 170.

¹⁶⁵ *Id.* The British bases and Greek and Turkish troops on Cyprus were not officially a part of the NATO system. *Id.* at 174.

For months, Cyprus has quietly allowed two British bases on the island, Akrotiri and Dhekelia, to be used by U.S., British and Italian planes carrying troops, supplies, casualties and diplomats to and from Beirut.

Strictly speaking, the bases, just 60 miles from Lebanon, are only for purposes of British security, and then only if Cyprus agrees. But Cypriot officials concede they're not being "too strict."

Worldgram: A Boost from the Cypriots, U.S. NEWS & WORLD REPORT, Oct. 10, 1983, at 25 (Emphasis in original).

¹⁶⁶ CYPRUS CONST. art. 125(1).

¹⁶⁷ CYPRUS CONST. art. 124(2).

¹⁶⁸ CYPRUS CONST. art. 123(1).

selection of a Greek Cypriot, the recommendation of five Greek members was to bind the Commission.¹⁶⁹

During the colonial era Greek Cypriots had dominated most of the colonial bureaucracy; strict implementation of the seventy-thirty ratio would have disrupted the civil service and caused experienced civil servants to be fired.¹⁷⁰ Within three years 2,000 civil service appointments were challenged on communal grounds and taken before the Supreme Constitutional Court.¹⁷¹ Upon the May 1963 resignation of the President of the Supreme Constitutional Court (a German, the well-known Heidelberg law professor Ernst Forsthoff) the tension generated by the seventy-thirty rule was never relieved by the Court.¹⁷²

As early as spring 1961, Turkish Cypriots indicated concern that the Public Service was not being filled in the Constitutionally required seventy-thirty ratio. Turkish Cypriot members of the House of Representatives in retaliation refused to support extension of the tax laws.¹⁷³

IX. THE CYPRIOT PERSONAL INCOME TAX DEADLOCK

A. *The Evidence: Calhoun in the Dock*

Article 188 (2) of the Cyprus Constitution provided that any tax law might continue to be enforced until December 31, 1960.¹⁷⁴ Failure to agree upon timely tax legislation resulted in the introduction of a bill proposing a three month extension of the existing law to March 31, 1961. This December 1960 extension by the House produced no permanent tax law, so the Council of Ministers asked the House for a second three month extension. The Turkish Cypriot Representatives counteroffered with a two month extension.¹⁷⁵ The Greek Cypriot Representatives refused.¹⁷⁶

The March 31, 1961, House vote on a three month extension found twenty-five Greek Cypriot Representatives in favor but eleven Turkish Cypriot Representatives opposed; two Turkish Cypriot Representatives abstained. As a result, the bill failed because it lacked an Article 78 (2) concurrent majority.¹⁷⁷

As of March 31, 1961, the Republic lacked income tax legislation, but the complete tax legislation breakdown came in the December 18, 1961, House debate on new income tax legislation. Greek Cypriot Representatives supported a tax bill submitted by the executive branch, but the Turkish Cypriot Representatives proposed an annual House review of tax rates.¹⁷⁸ The executive-proposed bill obtained thirty Greek Cypriot Representatives' votes, but eleven Turkish Cypriot Representatives opposed it (three Turkish Cypriot Representatives abstained). The Turkish Cypriot proposal won fourteen votes, all from Turkish Cypriot Representatives, against thirty votes opposed, all from Greek Cypriot Representatives.¹⁷⁹

¹⁶⁹ CYPRUS CONST. art. 125(3).

¹⁷⁰ Evriviades, *supra* note 35, at 243.

¹⁷¹ R. STEPHENS, *supra* note 32, at 175.

¹⁷² S. KYRIAKIDES, *supra* note 31, at 82.

¹⁷³ Ehrlich, *supra* note 21, at 1041.

¹⁷⁴ CYPRUS CONST. art. 188(2).

¹⁷⁵ S. KYRIAKIDES, *supra* note 31, at 84.

¹⁷⁶ *Id.* at 85.

¹⁷⁷ *Id.*

¹⁷⁸ S. KYRIAKIDES, *supra* note 31, at 88.

¹⁷⁹ *Id.* at 91.

As late as 1962, Turkish Cypriots suggested that a proposed annual income tax on foreign citizens and on foreign and domestic corporations be accepted if provisions as to the personal income tax on Cypriots be approved upon a three year basis only. The Greek Representatives could accept the first but not the second portion of the compromise.¹⁸⁰

The difficulty with the concurrent majority principle might be styled one of rule or ruin "ransom bargaining," given the tax vote retaliation over Public Service issues. This difficulty threatens democratic political negotiators bound to the unanimity principle with a deadlock of their democracy:

The ideal would be to replace majority rule with unanimity, such as arises automatically in exchanges in a free market. If I have bread and you have cheese, a voluntary agreement between us to exchange some of my bread for some of your cheese is unanimous if we two constitute the whole of society, and it preserves some of the character of unanimity when there are more than two people because the rest of the population preserves what it had before our agreement was struck. Voting is different. If you, I and a third party constitute a community with unlimited majority rule, you and I can combine to take what we please from the third party. The problem of faction . . . can be looked upon as arising because the essential unanimity required for commercial transactions does not extend to transactions in the political realm. The proposed solution is to make unanimity a requirement in politics as well.

Though unanimity is the ideal, it is not advocated in practice because of bargaining anomalies that would result. If unanimity is required for the passage of a new law, it becomes profitable for any man to hold the community to ransom by threatening to vote against the law even when he personally stands to gain from having it passed. Imagine a community of 15 people, each with an income of \$10 initially, and suppose the effect of a proposed law would be to raise every man's income to \$11. Each man has an incentive to vote for the law, but Mr[.] 1 may announce that he will vote against it unless given a premium of, say \$2.80 (\$0.20 from each of the remaining voters) over and above the \$1 he would get automatically. Since each voter is in a position to make such a threat, it becomes difficult to pass laws at all, and society becomes completely rigid or less prosperous than it might otherwise be.¹⁸¹

If interfactional unanimity is required for a new law, it profits a rule or ruin bloc to hold others to ransom by threatening veto even if the vetoer, like the Turkish House element, would itself benefit from passage. Sometimes effectuation of the concurrent majority principle can facilitate not interfactional conciliation as anticipated by Calhoun, but interfactional confrontation.

B. *The Verdict*

Calhoun (who, *inter alia*, had served as a South Carolina state legislator, U.S. Congressman, and U.S. Senator) was acutely aware of the prospect of democratic voters as plunderers:

[N]othing is more difficult than to equalize the action of the government in reference to the various and diversified interests of the community; and nothing more easy than to pervert its powers into instruments to aggrandize

¹⁸⁰ Adams, *supra* note 29, at 484.

¹⁸¹ D. USHER, *THE ECONOMIC PREREQUISITE TO DEMOCRACY* 116-17 (1981).

and enrich one or more interests by oppressing and impoverishing the others; and this, too, under the operation of laws couched in general terms and which, on their face, appear fair and equal.¹⁸²

How closely does this particular concern of Calhoun relate to the Cyprus income tax deadlock?

In the few decades prior to independence the static, rural Cypriot economy was transformed into an entrepreneurial, export-oriented one.¹⁸³ Yet the Turkish community reaped only a small share of this prosperity, and the gap widened after independence.¹⁸⁴ The Greek Cypriots, being wealthier, paid more in taxes.¹⁸⁵

The Turkish Cypriots during the early 1960s contributed only about £65,000 in taxes annually, which was some 9 percent of the income tax paid into the treasury. Greek and other Cypriots paid the remaining 91 percent.¹⁸⁶ (Indeed, ever since, "Greek" Cyprus has offered the success story of a booming capitalism.¹⁸⁷)

Turkish Cypriots offered a "very small contribution to the public expenditure."¹⁸⁸ As President of the House of Representatives Glafcos Clerides argued on December 18, 1961: "Surely the income from this tax, which comes mainly from the well-to-do Cypriot classes, will be used to cover the expenses of the five year plan, which plan will benefit not only the Greeks or the Turks but Cyprus as a whole. . . ."¹⁸⁹

Greek Cypriots believed it to be blackmail when the Turkish Cypriots decided to make nondiscriminatory income tax extension contingent upon strict implementation of independent Constitutional provisions, rather than agreeing to resolve intercommunal grievances through the judicial system.¹⁹⁰ Witness President Makarios' November 30, 1963, Proposals to Amend the Cyprus Constitution:

Past experience has shown that the right of separate majorities was not exercised by the Turkish Representatives because of disagreement with provisions of the taxation legislation before the House. The Turkish Members used this right against taxation Bills neither because they disagreed with their provisions nor because such Bills were *discriminatory* against their community, but for matters unconnected with taxation legislation.¹⁹¹ (Emphasis added).

¹⁸² J. CALHOUN, *supra* note 83, at 15.

¹⁸³ Worsley, *supra* note 23, at 11.

¹⁸⁴ *Id.*

¹⁸⁵ R. STEPHENS, *supra* note 32, at 173.

¹⁸⁶ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 13.

¹⁸⁷ Worsley, *supra* note 23, at 15.

¹⁸⁸ Trombetas, *supra* note 11, at 15.

¹⁸⁹ S. KYRIAKIDES, *supra* note 31, at 91 (citing House of Representatives, Minutes, Dec. 18, 1961, at 16-23 (translation by S. Kyriakides)).

¹⁹⁰ Evriviades, *supra* note 35, at 243.

The Turkish Members voted against such legislation not because they were holding any opposite view or because it contained any unfavourable discrimination against their Community but they used their right of separate voting in order to compel Government to yield to Turkish claims having no connection with any matter of taxation.

C. TORNARITAS, *supra* note 99, at 47.

¹⁹¹ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 23.

Was it necessary . . . to give the Turkish members in the House of Representatives an absolute veto power over all tax legislation? Would it not have been enough to protect against discriminatory taxes through the Supreme Constitution Court's power to void any law that discriminated against one of the two communities?

Ehrlich, *supra* note 21, at 1039.

Did the Cyprus income tax deadlock obtain relative to a Calhounian concurrent majority requirement?

It did not. Recall that Calhoun called for Constitutional provisions "... taking the sense of each interest or portion of community which may be *unequally and injuriously* affected by the action of the government separately, through its own majority or in some other way by which its voice may be fairly expressed, and to require the consent of each interest either to put or to keep the government in action."¹⁹² (Emphasis added). By allowing vetoes beyond the scope of Calhoun's concurrent majority requirement ("unequally and injuriously affected by the action"), the Cyprus Constitution invited ransom bargaining.

Nor is this an incidental invocation of Calhoun. On the contrary, it was intersectional U.S. tax struggle over the protective tariff that first led Calhoun to develop his minority rights theories.¹⁹³ Unequal tax policy, and emphatically not North-South struggle over America's West, generated the Calhounian theory.¹⁹⁴

Blindness to the fact that Calhoun long before had sensitively analyzed the minority veto principle at play in the Cyprus Constitution was suggested in the 1967 report of Dr. Karpas, "The concurrent majorities of Greek and Turkish members of Parliament was [sic] required on matters concerning taxation in order to prevent discrimination."¹⁹⁵ A Calhounian concurrent majority, unlike the Cyprus Constitution tax veto, would have been *limited to* the discriminatorily taxed ("unequally and injuriously affected") parties to a given measure; it emphatically could not be wielded toward blackmail over nondiscriminatory bills.

Protest by Greek Cypriots was registered against "what amounted to final veto power held by the Turkish Cypriot representatives in the Legislative Assembly with respect to laws and decisions affecting the entire population."¹⁹⁶ Yet a Pulitzer Prize-winning biog-

¹⁹² J. CALHOUN, *supra* note 83, at 25. P. POLYVIU, *supra* note 51, at 29.

¹⁹³ M. COIT, JOHN C. CALHOUN: AMERICAN PORTRAIT 165-71 (1950).

¹⁹⁴ From Calhoun's excitement over the tariff question, we can see that slavery was not now foremost in his mind. What he did see — with his uncanny grasp of fundamentals — was 'the great and vital point' as 'the industry of the country — which comprehends almost every interest.' Slavery, the tariff, banking — all were aspects of this one point. The issues did not make the division; the basic 'geographic dissimilarity' between North and South created the issues. In almost every aspect of their 'industries,' the expanding North and the retreating South were at odds.

Already Calhoun saw that the South was fated to become a minority in the nation. And for him the minority question was basic. The Union, as he interpreted it, was devised for the protection of minorities; majorities could look after themselves. And the South, an economic minority within the Union, was being reduced to financial subservience by a hostile voting majority.

That Calhoun's political theory was designed to cover the peculiar needs of the slaveholders is undeniable. That slavery was one of the reasons why his theory was developed is possible. Yet the gist of his doctrine — whatever may have been its conscious or unconscious origins — the protection of minority rights within the Union transcended the immediate issues of his own time, however vital they may have been.

Whatever question or combination of questions led Calhoun to focus his interest on minorities at this period, the tariff was undoubtedly the immediate cause. Symbolically, at least, its importance can hardly be overestimated.

Id. at 171 (quoting J. CALHOUN, *The South Carolina Exposition* (December 1828), reprinted in 6 REPORTS AND PUBLIC LETTERS OF JOHN C. CALHOUN 1, 31 (R. Crallé ed. 1968)).

¹⁹⁵ Karpas, *supra* note 12, at 42. This is an exquisitely rare example of the use of the phrase "concurrent majority" in Cyprus Constitution discourse.

¹⁹⁶ F. Bunge, *supra* note 25, at 161.

raphy of Calhoun avers that one must "remember that under his [concurrent majority linked] nullification theories a state could suspend a law only in relation to itself, not for the rest of the country."¹⁹⁷

In all events, the failure of Cypriot personal income tax legislation was not the disaster one might expect. On April 1, 1961, President Makarios declared that the end to taxation "shakes the very existence of the Cyprus Republic, because no state can survive without taxation laws."¹⁹⁸ But just as the Constitution had provided some national security through the Cyprus-Greece-Turkey-U.K. Treaty of Guarantee and the Cyprus-Greece-Turkey Treaty of Alliance (both of which were of Constitutional force), so the Constitution encompassed a "fallback position" for taxation.

On December 20, 1961, the Greek Communal Chamber passed a bill imposing upon members of the Greek Community a "Personal Contribution" covering the amount included in the personal income tax bill defeated in the House. In effect, the Turkish Cypriot nullification vetoed the tax law only in relation to itself, not for the balance of the country. The Turkish Communal Chamber too passed its own income tax law.¹⁹⁹ The Supreme Constitutional Court upheld as Constitutional these enactments of both Communal Chambers.²⁰⁰ Ultimately, three different tax systems were applied: one each through the Communal Chambers plus a tax upon foreigners through the House of Representatives.²⁰¹

In brief, the Cypriot personal income tax deadlock did not obtain as to a Calhounian concurrent majority rule. Moreover, the Constitution included something of a communal fallback position in case of a national policymaking stalemate.

X. THE MUNICIPALITIES ISSUE

A. *The Evidence: Calhoun in the Dock*

It was the Municipalities issue more than any other that provoked major Constitutional conflict in Cyprus.²⁰² In June 1958, Turkish Cypriots became the first to launch communal town councils in the four largest towns, a move upheld by a 1959 British

¹⁹⁷ M. COIT, *supra* note 193, at 528. Comparably, the legal basis for the liberum veto in the Polish Parliament originated "in the statutes of Nieszawa (1454), which promised that no royal legislation would be introduced into a province without the consent of the its local sejmik [provincial assembly of nobility]." A REPUBLIC OF NOBLES: POLISH HISTORY TO 1864 xiv (J. Fedorwicz ed. 1982). Calhoun studied with appreciation the liberum veto. J. Calhoun, *supra* note 83, at 71-72. "This device [nullification] in Calhoun's mind was merely an aspect of a larger theory, namely, that of the 'concurrent majority.'" 2 R. GABRIEL, *THE COURSE OF AMERICAN DEMOCRATIC THOUGHT* 110 (1956).

¹⁹⁸ CYPRUS — OLD PROBLEM, NEW CRISIS, *supra* note 36, at 27.

¹⁹⁹ S. KYRIAKIDES, *supra* note 31, at 92. Article 108(1), allowing for Community subsidies from mainland Greece and Turkey, likewise afforded something of a national income tax deadlock fallback position. CYPRUS CONST. art. 108(1).

²⁰⁰ The Court's position with reference to the legality of the actions of both Communal Chambers is reflected in the following case involving the Greek Communal Chamber. "In the Matter of the Tax Collection Law No. 31 of 1962, and Hji Kyriacos and Sons Ltd. of Famagusta," (Case No. 298/62), in *Reports of Cases of the Supreme Constitutional Court of Cyprus* (Cyprus: The Printing Office of the Republic, 1963), Vol. 5, at 22-23.

Id. at 92 n.56.

²⁰¹ Evriviades, *supra* note 35, at 244.

²⁰² T. EHRLICH, *supra* note 28 at 44; R. STEPHENS, *supra* note 32, at 175.

ruling. Pressures during the 1955-1959 interval against Cypriots crossing communal lines to do business developed a sense of economic partition within each community.²⁰³

Articles 173-178 of the Constitution provide that each of the five largest towns divide into Greek and Turkish municipalities.²⁰⁴ Article 173 (1) provides:

Separate municipalities shall be created in the five largest towns of the Republic, that is to say, Nicosia, Limassol, Famagusta, Larnaca and Paphos by the Turkish inhabitants thereof:

Provided that the President and the Vice-President of the Republic shall within four years of the date of the coming into operation of this Constitution examine the question whether or not this separation of municipalities in the aforesaid towns shall continue.²⁰⁵

Article 173 (1) was the most important of a variety of detailed Constitutional protections for the national minority;²⁰⁶ separate Municipalities were functioning when the Republic was born, albeit their precise territorial jurisdiction was undefined.²⁰⁷

Acting under Article 177 the President and Vice-President appointed Committees of Greek and Turkish Cypriots in each town; these Committees failed to define the areas of the Municipal Councils.²⁰⁸ Article 188 (2) provided for existing laws relating to the municipalities to be effective for six months post-independence.²⁰⁹ The House of Representatives eight times passed short-term extensions of the provisions of Article 188 (2) until a December 1962 negotiations collapse.²¹⁰

At the December 31, 1962, House meeting Representative Halit Ali Riza declared of a Turkish bill:

We believe that, taking into consideration the complexity of the question not only politically but also technically, much more time should be allowed for such discussions to continue, which we hope and expect would be with an open mind and elasticity within the framework and provisions of the Constitution and not based on fixed, unchangeable ideas and assumptions; . . . With every good will and intention . . . we have submitted this bill of which the effect, if approved, by the House, would be to prolong the operation of the existing Municipal Corporation Laws for a certain period of time; we suggest a year but will accept any reasonable period.²¹¹

Greek Representatives believed continuation of the existing law meant acceptance of the

²⁰³ Adams, *supra* note 29, at 488; S. KYRIAKIDES, *supra* note 31, at 94.

²⁰⁴ CYPRUS CONST. arts. 173-178.

²⁰⁵ CYPRUS CONST. art. 173(1).

²⁰⁶ Ehrlich, *supra* note 21, at 1036-37. Articles 87 and 89 anticipated that the laws concerning municipal administration in these five towns must be supplemented by Communal Chamber Legislation. CYPRUS CONST. arts. 87 and 89.

²⁰⁷ Evriviades, *supra* note 35, at 244.

²⁰⁸ P. POLYVIU, *supra* note 51, at 34.

Subject to the provisions of Articles 173 to 178, both inclusive, each municipality in any such town shall exercise its jurisdiction and perform all its functions respectively within a region the limits of which shall be fixed for each municipality by agreement of the President and the Vice-President of the Republic.

CYPRUS CONST. art. 177.

²⁰⁹ CYPRUS CONST. art. 188(2).

²¹⁰ S. KYRIAKIDES, *supra* note 31, at 95.

²¹¹ *Id.* at 99 (citing House of Representatives, Minutes, Dec. 31, 1962, at 2).

pre-independence separate Municipalities.²¹² The Turkish Representatives voted for the bill but all of the Greek Representatives voted against it.²¹³

On January 2, 1963, the Council of Ministers by appointing Improvement Boards attempted to create Municipal Councils to fill the gap left by the statute which had expired on December 31, 1962. The Council of Ministers intended to bring under unified control both Greek and Turkish sections of the Municipalities.²¹⁴

B. *The Verdict*

In response, the Turkish Communal Chamber applied to the Supreme Constitutional Court for a ruling on the validity of the Council order. On April 25, 1963, the Court held that the Council's order violated the Constitutional requirement that separate Municipalities be established.²¹⁵ But for the first time, after more than two years of Supreme Constitutional Court unanimity, the Greek Justice, Michalakos Triantafyllides, dissented.²¹⁶

President Makarios had stated while the Municipalities dispute was pending before the Court that he would not comply with an adverse decision.²¹⁷ It was due to this affront that President of the Supreme Constitutional Court Forsthoff resigned his post.²¹⁸

In short, the Municipalities deadlock did not obtain because a Turkish Cypriot minority, hewing to the Constitution, abused its concurrent majority Constitutional veto power. It obtained because the nationwide majority *failed* to hew to the Constitution. Former President of the Supreme Constitutional Court Forsthoff on December 30, 1963, had this exchange with a correspondent:

²¹² S. KYRIAKIDES, *supra* note 31, at 99.

²¹³ *Id.* at 100.

²¹⁴ *Id.* at 101.

²¹⁵ Ehrlich, *supra* note 21, at 1042.

The Court's other grounds were: (1) The Council's order was not properly promulgated because the vice-president had refused to sign it, although he had no right to refuse under article 57 of the Constitution; (2) regulation of municipal administration was reserved to the House of Representatives under articles 78, 87, 89, and 173-177 of the Constitution; and (3) the pre-independence law was not intended to apply to towns. The Turkish Communal Chamber and the Council of Ministers, Supreme Constitutional Court, Apr. 25, 1963, 5 R.S.C.C. 59, 74-77. The Court's opinion includes no reasoning to support its conclusion that an order of the Council is invalid if not promulgated by the vice-president, and it is by no means clear what action to force his signature would be appropriate. But the other grounds of the Court's opinion are separately as well as collectively persuasive.

Id. at 1042 n.90.

²¹⁶ Ehrlich, *supra* note 21, at 1042 (citing 5 R.S.C.C. at 96); S. KYRIAKIDES, *supra* note 31, at 102.

²¹⁷ Z. NEDJATIGIL, *supra* note 30, at 7 n.24. Assuredly, Turkish Cypriot proposals as to territorial division of the Municipalities may have been impractical. Recalled President Makarios:

The Vice-President proposed that:

'The frontage of all property abutting on any street will be measured and if the total length of the frontage of the property belonging to the members of the Greek community in that street is greater, then that street will be included in the sector of the Greek Municipality. The same principle will apply in the case of a street where the total length of the frontages of the property belonging to the members of the Turkish community is greater.'

INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 23.

²¹⁸ Z. NEDJATIGIL, *supra* note 30, at 7.

Q. Can you briefly state the last incident in the chain of events which led to your resignation?

A. These criticisms against the Constitution increased as time went on and when the question of establishing separate municipalities in the five main towns was brought before the Court it was insisted that the establishment of such separate municipalities was not practicable. The Court formulated its decision with utmost care in order to make it possible for a compromise solution.²¹⁹

XI. THE DESTRUCTION OF THE CYPRUS CONSTITUTION

Tensions in Cyprus had been building rapidly over the latter half of 1963, but if any one event can be said to have set the stage for violence, it was the Makarios November 30, 1963, announcement to Vice-President Kuchuk and December 5, 1963, announcement to the Guarantor Powers proposing thirteen major Constitutional revisions:²²⁰

1. The right of veto of the President and the Vice-President of the Republic to be abandoned.

2. The Vice-President of the Republic to deputise for the President of the Republic in case of his temporary absence or incapacity to perform his duties.

3. The Greek President of the House of Representatives and the Turkish Vice-President to be elected by the House as a whole and not as at present the President by the Greek Members of the House and the Vice-President by the Turkish Members of the House.

4. The Vice-President of the House of Representatives to deputise for the President of the House in case of his temporary absence or incapacity to perform his duties.

5. The constitutional provisions regarding separate majorities for enactment of certain laws by the House of Representatives to be abolished.

6. Unified Municipalities to be established.

7. The administration of Justice to be unified.

8. The division of the Security Forces into Police and Gendarmerie to be abolished.

9. The numerical strength of the Security Forces and the Defence Forces to be determined by Law.

10. The proportion of the participation of Greek and Turkish Cypriots in the composition of the Public Service and the Forces of the Republic to be modified in proportion to the ratio of the population of Greek and Turkish Cypriots.

²¹⁹ *Id.* at 73. Claimed Vice-President Kuchuk:

Whenever the Turks tried to make use of any of their constitutional rights, they were met with the same pre-conceived intention to undermine the relevant constitutional provisions with a view to rendering the Constitution inoperative. The argument that the three years' experience has made it clear that it is necessary to revise the Constitution is nothing but a pretext to take away the just rights of the Turks.

In short, whenever a crisis arose as regards the implementation of the Constitution and the Turks were forced to rely on their constitutional rights, the Greek side came out with a counter claim to rescind that part of the Constitution which provided for the Turkish community some powers to make their views heard in the general administration of the Republic's affairs.

S. KYRIAKIDES, *supra* note 31, at 107-08.

²²⁰ Ehrlich, *supra* note 21, at 1043; Evriviades, *supra* note 35, at 245.

11. The number of the Members of the Public Service Commission to be reduced from ten to five.
12. All decisions of the Public Service Commission to be taken by simple majority.
13. The Greek Communal Chamber to be abolished.²²¹

The effect of these thirteen points would have been to abolish many provisions for separate communal institutions and create an integrated unitary state with limited guarantees for Turkish Cypriots.²²² This revision program would repeal basic articles for which the Turks had fought hard:²²³ "It would have ended the veto embodied in the powers of the President and Vice-President, and in the separate majorities required for certain laws in the House of Representatives."²²⁴ When the government of Turkey rebuffed these proposals, as the President must have anticipated, he refused its rejection.²²⁵

Within days, fighting was sparked on Cyprus.²²⁶ Throughout 1964 and 1965 neither the Greek Cypriot nor the Turkish Cypriot community allowed complete freedom of movement to their counterparts notwithstanding the best efforts of United Nations representatives.²²⁷

With no prior consultation, Nicosia on January 1, 1964, abrogated its treaties with Greece, Turkey and Britain.²²⁸ In February 1964 London appealed to the U.N. Security Council, which agreed on a resolution authorizing a U.N. peacekeeping force for Cyprus:²²⁹ "Russia, contrary to earlier gloomy forecasts in London and Washington, did not obstruct the move for a UN force, despite her known disapproval of the financial and legal aspects of previous peace-keeping operations."²³⁰ On March 14, 1964, the Canadian advance guard of the U.N. force flew into the island.²³¹ This Security Council move itself demonstrates the launching of a major operation through the Security Council's own concurrent majority policymaking formula.²³²

XII. CONCLUSION

A. The 1960 Constitution

The destruction of the Cyprus Constitution obtained upon the calculated repudiation thereof by majority faction leaders. The pro-minority, concurrent majority devices

²²¹ The text of President Makarios' November 30, 1963, Proposals to Amend the Cyprus Constitution is found in INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 20-28.

²²² R. STEPHENS, *supra* note 32, at 179.

²²³ Ehrlich, *supra* note 21, at 1044.

²²⁴ R. STEPHENS, *supra* note 32, at 179.

²²⁵ Ehrlich, *supra* note 21, at 1044.

²²⁶ *Id.*

²²⁷ *Id.* at 1052.

²²⁸ R. STEPHENS, *supra* note 32, at 185.

²²⁹ *Id.* at 189-90.

²³⁰ *Id.* at 190.

²³¹ *Id.* at 191.

²³² But Dr. Peter F. Drucker contends that it is of the essence of the concurrent majority that it can never be rendered an official part of any effective government. Drucker, *A Key to American Politics: Calhoun's Pluralism*, in JOHN C. CALHOUN 133, 135 n.3 (J. Thomas, ed. 1968). The Security Council concurrent majority mechanism derived from Calhounian inspiration. Franklin, *The Roman Origin and the American Justification of the Tribunital or Veto Power in the Charter of the United Nations*, 22 TUL. L. REV. 24, 25-26 (1947).

therein did not foil Cypriot Constitutional democracy. The fact alone that the Cyprus concurrent majority apparatus did not preclude popular government signals that the concurrent majority principle can remain of at least theoretical interest to comparative constitutional scholars.

However, Cypriot political frustration over the Cypriot personal income tax veto did demonstrate that the draftsmen of the Constitution (the Joint Constitutional Commission) failed to do their homework and consult Calhoun when incorporating the concurrent majority. They were, apparently, ignorant that a veto is best used to defend unequally and injuriously affected minorities.²³³ Article 78 (2), as to its overly inclusive taxation subject matter, needlessly invited ransom bargaining deadlock.

Moreover, the draftsmen of Article 78 (2) seem to have failed to learn from Calhoun as to not only the subject matter of a legislative concurrent majority requirement, but as to the optimal procedural criteria thereof. President Makarios in his Proposals to Amend the Cyprus Constitution gave an expansive reading to the House concurrent majority rule: "If, for example, 35 Greek Members and 7 Turkish Members vote in favour of a Bill, i.e. the Bill receives a total of 42 votes in favour, it can be defeated by 8 Turkish votes. Even 2 Turkish Representatives can defeat a Bill if only 3 Turkish Representatives take part in the vote."²³⁴

Other analysis of the constitution has agreed with Makarios's two-Representative veto interpretation.²³⁵ Cyprus Attorney General Criton G. Tornaritis, Q.C., plausibly said that even a solitary Turkish Representative "if two of them were present and voted"²³⁶ could veto tax legislation.

But concurrent majority theory is to facilitate rule by the bulk of each and all crucial *blocs*. The approach better than the unit veto would be that bills supported by a national majority could be vetoed only by *most* of the Turkish Representatives (eight of fifteen). This prudent eight-man rule has been the Constitutional reading of several Cyprus scholars.²³⁷

Calhoun was particularly alert to the fact that the ten-man ancient Roman tribuneship employed a veto over governmental measures not as individual Tribunes but only through their own "majority."²³⁸ This could suggest his opposition to a Turkish Cypriot Representative unit veto.²³⁹

The timebomb House of Representatives unit veto was a political (and Constitutional) catastrophe waiting to happen. That prospective Article 78 (2) unit veto explosion, like

²³³ The principle of separate majorities, if it is to be applied at all, must obviously only be introduced by reference to well delineated criteria and only (a) for those classes of legislation which could directly encroach upon the interests of the Communities and (b) where no other effective remedy can be found. This, of course, was not so under the 1960 Constitution. . . .

P. POLYVIU, *supra* note 51, at 29.

²³⁴ INSTITUTE OF GREEK-AMERICAN HISTORICAL STUDIES, *supra* note 14, at 20, 22.

²³⁵ *Id.* at 11.

²³⁶ C. TORNARITIS, *supra* note 99, at 47.

²³⁷ Doumas, *supra* note 27, at 80; Adams, *supra* note 29, at 484.

²³⁸ J. Calhoun, *supra* note 144, at 109, 270.

²³⁹ Indeed, among Rome's Tribunes a unit veto obtained *against* their collective majority veto: The only effective check which the Senate had upon the proceedings of the Tribunes was, that one Tribune could put his veto upon the acts of his colleagues. Consequently, by securing the support of one member of the body, the Senate were [sic] able to prevent the other Tribunes from carrying out their plans.

W. SMITH, A SMALLER HISTORY OF ROME 121 (1879).

the Article 78 (2) ransom bargaining crisis which did transpire, was avoidable by prior consultation with Calhoun. Seeming ignorance of Calhoun on the part of the Legal Advisor to the Joint Constitutional Commission, Professor of Law Marcel Bridel, and on the part of Commission legal advisors who were Greek and Turkish nationals — upon whom fell the burden of work²⁴⁰ — might however be understandable.²⁴¹

B. *The 1983-1984 Situation*

In the November 15, 1983, Turkish Republic of Northern Cyprus declaration, Denktash told his countrymen that the aim was not to “hinder but facilitate the establishment of genuine federation” between Turkish Cypriots and Greek Cypriots.²⁴² Many observers in Istanbul believed the Denktash declaration was intended mainly to gain a better bargaining position toward equal intercommunal partnership in a projected Cyprus federation.²⁴³ Turkish Cypriot press reports stressed that the November 15 declaration was “not a secession” but aimed at attaining equal bargaining status for the Turkish Cypriots with the Greek Cypriots.²⁴⁴

Mr. Denktash on November 17, 1983, proposed immediate negotiations with Greek Cypriots for an interim government on Cyprus.²⁴⁵ Greek Cypriots by 1983 long had insisted upon a federal Cyprus, while Turkish Cypriots had pushed for a confederation.²⁴⁶ Averred Turkish Cypriot Foreign Minister Kenan Atakol: “We are looking for a

²⁴⁰ One section of the Zurich-London Agreements created a Joint Constitutional Commission, composed of representatives of the Greek and Turkish Cypriot communities and the Greek and Turkish governments, with legal advisors. The job of the Commission was to draft a constitution for the Republic of Cyprus, building on the basic structure agreed upon at Zurich and London. The Commission met for the first time on Apr. 13, 1959, under the leadership of Marcel Bridel (a professor of law and one-time rector of the University of Lausanne), whose official title was Legal Advisor to the Commission. Less than a year later, the draft constitution was completed in Lausanne, Switzerland.

The task of amplifying specific constitutional provisions in the framework set up by the Zurich-London Agreements was not an easy one. The burden of work fell upon the legal advisors who were Greek and Turkish nationals, since the British authorities had no representatives on the commission and the Cypriots were comparatively inexperienced in such matters. However, when the draft constitution was submitted to Great Britain, she informed the other interested nations that Her Majesty's Government had no comments, additions, or deletions to make.

Adams, *supra* note 29, at 476.

²⁴¹ “Yet several Greek writers have referred to the Constitution as an ‘Anglo-Saxon’ inspiration.” Ehrlich, *supra* note 21, at 1038 n.74 (citing Antonopoulos, *Les Tendances Constitutionnelles des Etats Ayant Accede Recemment a L'Independance*, 15 *Revue Hellenique de Droit International* 307, 311 (1962); and Tenekides, *La Condition Internationale de la Republique de Chypre*, 6 *Annuaire Francais de Droit International* 133, 155 (1960)). But as late as 1968 even distinguished Harvard University jurist Carl J. Friedrich could discuss the Constitution in a chapter entitled *Cyprus: The Dangers of Dualism* without mentioning Calhoun. C. FRIEDRICH, *TRENDS OF FEDERALISM IN THEORY AND PRACTICE* 123-28 (1968).

²⁴² Rogal, *supra* note 3, at 59; *Turk Cypriots Will Draft Constitution*, *supra* note 1, at 14A, col. 1.

²⁴³ Cohen, *supra* note 6, at 12, col. 3.

²⁴⁴ Bruce, *Turkish Cyprus declared independence: a mouse that roared?*, *Christian Sci. Mon.*, Nov. 16, 1983, at 16, col. 1, col. 4.

²⁴⁵ Bruce, *supra* note 4, at 11, col. 3.

²⁴⁶ *Id.* at 14, col. 3.

Having proclaimed a separate state, Mr.[.] Denktash announced that he is now anxious to talk about federation. This is like trying to build a bridge from the middle of the river. The Turkish Cypriots have declared their independence or secession from

bizonal, bicommunal federal republic. In our declaration we said that we extended a peaceful hand to the Greek Cypriots. If they refuse to negotiate with us, the declaration will show the whole world that we believe we have as much right to self-determination as the Greek Cypriots have."²⁴⁷

The two blocs by late 1983 already had reached agreements on the sharing of electricity and water, as well as sewage control in the country's divided capital, Nicosia.²⁴⁸ By 1984 Cyprus President Spiros Kyprianou no longer demanded a strong central government and anticipated greater autonomy for the Turkish Cypriot administration than Greek Cypriots theretofore had been willing to concede.²⁴⁹

C. *The Concurrent Majority and Cyprus: 1984-1985*

Belgium, Switzerland, and, ironically, Lebanon have been cited as precedents for Constitutional intercommunal conciliation in Cyprus.²⁵⁰ During the nineteen-sixties commentators repeatedly held Lebanon²⁵¹ up to Cyprus as a good example.²⁵² But by 1984, effectively partitioned-Cyprus was being held up to charnelhouse-Lebanon²⁵³ as a good example for her.²⁵⁴ Comparative constitutional scholars cannot be overly confident

the Republic, but they have also made a declaration of dependence on Turkey. Every facet of the northern state, which was complete in most respects before 15 November, illustrates that: Turkish currency, Turkish newspapers, Turkish time, Turkish soldiers (to the number of perhaps 30,000), Turkish settlers and workers imported to work the fields, Turkish airlines and the Turkish flag. In an absurdly revealing fashion, the authorities even use the Turkish word for the island ('Kibris') when speaking or writing in English. Not even the most consecrated Greek Cypriot calls it "Kypros" in the same way.

Hitchens, *Clever Turkish politics*, THE SPECTATOR, NOV. 26, 1983, at 3.

²⁴⁷ Davidson, *supra* note 2, at 38.

²⁴⁸ Editorial, *Cyprus rift*, Christian Sci. Mon., Nov. 18, 1983, at 21, col. 1.

²⁴⁹ Wiznitzer, *Greeks and Turks talk past each other in trying to solve the Cyprus deadlock*, Christian Sci. Mon., Feb. 1, 1984, at 8, col. 3.

²⁵⁰ Adams, *supra* note 29, at 489.

²⁵¹ Lebanon offers an example of a modern democratic state based on confessional-communal organization. Prior to the establishment of the Lebanese state the isolationist Christians claimed that the Muslim Arabs would never forego their own brand of nationalism, while the Muslims demanded unity with Syria and opposed the idea of an independent Lebanon as politically non-viable. Eventually the Lebanon gained independence in 1943, based on an inter-faith National Pact which provided for the political association of various cultural groups. The constitutional order of the Lebanon is based on communal-confessional differences which are far more pronounced than in Cyprus. Lebanon was 'a political compromise, not an ideological situation,' and this compromise, more than any other factor, accounts for the country's survival and the rudiments of a Lebanese political identity.

Trombetas, *supra* note 11, at 41-42.

²⁵² As the Lebanon provides an example of co-operation between Christians and Moslems and Latin and Orthodox, so Cyprus might bring Greek Orthodox and Turkish Moslem together. Perhaps it might in time be joined by another mixed state bringing Jews together with Arabs in a union of Israel and Jordan — though it must be admitted that at present such a prospect is extremely remote.

R. STEPHENS, *supra* note 32, at 218.

²⁵³ I. RABINOVICH, THE WAR FOR LEBANON, 1970-1983 (1984).

²⁵⁴ A new term has appeared in diplomatic dispatches reporting on Lebanon's chaos: 'The Cyprus solution.'

In plain language, it implies a physical separation of Lebanon's feuding religious

if they prescribe rather than describe and explain.

Those Greek Cypriot and Turkish Cypriot nationalists who might not fanatically have favored enosis or taxim yet still have found attractive the goals of autonomy and virtually complete self-determination for their peoples could have appreciated this conclusion by August O. Spain in his *The Political Theory of John C. Calhoun*:²⁵⁵

Basically, Calhoun devoted himself to the task of justifying autonomy and practically complete self-determination for the South, which to him and to many of his contemporaries represented a more genuine unity of interest and culture than the larger and politically articulated union of the United States. The particular form of his political and constitutional theory was largely determined by the fact that the South as such had no political organization and could, therefore, be distinguished from the North only by making the States the significant political entities. However, Calhoun was also motivated by an honest interest in the protection of minorities and by a belief in the efficacy of decentralization in government. If he could have divorced the term 'nationalism' from its connotation of complete political unity and centralization, he could well have called himself a Southern nationalist.²⁵⁶

As Prof. George F. Kateb explains with words relevant to Cyprus:

[T]here may be situations in which a minority group in society stands in constant peril from the majority. There may be situations in which a society is fundamentally divided into a permanent majority and a permanent minority, and in which the majority does not extend civil feelings toward the minority. A normal society could not exist in the absence of widespread civil feelings, no matter how much diversity it contains, no matter how many factions and conflicts of interest it contains. But a certain group within it may, for one reason or another, arouse the murderous animosity of the rest. Ethnic, religious, racial, and linguistic minorities come to mind from our own present experience. The rights of these groups could perhaps be designated as 'interests,' if the meaning of that word were extended. Calhoun's analysis would apply. It would then be an open question whether the majority would choose to be just and respect minority rights by complying with the arrangements meant to protect them. In any case, whether they did so or not, right is on the side of the minority.²⁵⁷

sects and political clans. Such a separation has existed on Cyprus since Turkish troops invaded the island in 1974.

It has not solved what is known as 'the Cyprus problem,' but it has eliminated bloodshed and intercommunal strife.

Boroweic, *Lebanon: Specter now a nightmare*, Evening Journal (Wilmington, Del.), Feb. 8, 1984, at A14, col. 2. (Andrew Boroweic is a correspondent for the Chicago Sun-Times based in Nicosia.)

²⁵⁵ A. SPAIN, *THE POLITICAL THEORY OF JOHN C. CALHOUN* (1968).

²⁵⁶ *Id.* at 258-59. Compare Spain's choice of words ("autonomy and practically complete self-determination") with these: "[T]he aim of the first Republic of Cyprus, in the words of a British publicist, was that 'the amount of unity to be achieved in the island shall be that minimum which is compatible with the maximum expression of communal individuality.'" Adams, *supra* note 29, at 488-89 (citing Baker, *The Settlement in Cyprus*, POL. Q. 248 (July- Sept. 1959)).

²⁵⁷ Kateb, *The Majority Principle: Calhoun and His Antecedents*, 84 POL. SCI. Q. 583, 604-05 (1969).

Found Canada's internationally respected comparative constitutional scholar Prof. Edward McWhinney:

Whether any positive law instrument, however carefully drafted, could have yielded a viable, working constitution for Cyprus, granted the nature and history of the vested interest and commitments, in Cyprus, of the two 'parent' nations on the Greek

and Turkish mainlands, and also the degree of mutual intransigence of these two parent nations, is open to question. Certainly, it seems fair to conclude that the influence of the constitution itself in the exacerbation of the racial strife between the Greek and Turkish communities on Cyprus itself was at the most peripheral. On the whole, and as an exercise in rationalised constitutionalism — in the postulation of an ‘ideal-type’ model for the institutional moderation of power — it seems to have been an eminently fair and reasonable document,

E. McWHINNEY, *FEDERAL CONSTITUTION-MAKING FOR A MULTINATIONAL WORLD* 76-77 (1966).